REPORT

OF

THE COMMITTEE FOR INVESTIGATION OF CAUSES OF CORRUPTION IN SUBORDINATE COURTS IN U. P.,

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FOREWORD

The Chairman

The problem which we were called upon to tackle was a vast and a complicated one. In order to tackle the problem properly, not only the collection of statistics and spot observations but also the consideration of opinions expressed by individuals and associations as also the examination of witnesses appeared necessary, and all this was done.

The canvas on which we were called upon to paint was really a large one; even so we did not use a rough brush or dab paint indiscriminately to cover the canvas.

I can, both for my colleagues and myself, say that no pains were spared to make our investigations as thorough as was possible.

The reader may find some repetitions in the Report but I make no apology for it because the nature of the treatment which the subject under investigation demanded was such as cried for some repetition.

A cursory reading may appear to reveal some shortcomings, even some omissions, but our belief is that on closer examination it would be found that nothing material or significant has been omitted from consideration.

I feel it my duty to acknowledge the vast amount of understanding, patience and co-operation which I had from my colleagues and the enthusiasm and labour which they put into the task.

I take this opportunity also to acknowledge the valuable contribution made by Sri (now Mr. Justice) Mithan Lal who was Member-Secretary of the Committee till he was elevated to the High Court Bench.

I like, before I end, to make a few more acknowledgments:

I acknowledge the able assistance which I received from Sri L. P. Nigam both before and after he became Member-Secretary of the Committee.

I acknowledge the help which Sri Jag Mohan Lal, Deputy Secretary, Judicial Branch, who had a whole-time assignment with the Committee for sometime, gave us by his very hard work: he did all he could to help the Committee in finalising this rather voluminous Report.

I acknowledge the assistance received from the Assistants of the Judicial (A) Department and in particular Sri Pratap Shanker Srivastava, who had been deputed for the work of the Committee.

I acknowledge the hard work of Sri Naubat Rai Srivastava, my Personal Assistant, who took my dictations at odd hours and even during holidays with cheerfulness and efficiency and produced the typed scripts with commendable swiftness.

B. MUKERJI.

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PART I

REPORT

CHAPTER I

INTRODUCTORY

Appointment of the Committee.

The Working Committee of the U. P. Lawyers' Conference passed a resolution on November 17, 1957, requesting Government to appoint a committee consisting of the representatives of the Conference, the Government and the High Court to go into the question, and to suggest remedies, for the eradication of corruption from law courts. The State Government took a decision on this matter and in accordance with that decision they, by a resolution no. A-1016/VII—586-1957, dated March 16, 1959, appointed the following Committee:

Chairman:

Mr. Justice B. MUKERJI, Judge, High Court of Judicature at Allahabad.

Members:

1. SRI K. L. MISRA, Advocate General, Uttar Pradesh.
2. SRI S. N. KATJU, Member, Legislative Council, U. P.
3. SRI GOVIND SAHAI, Member, Legislative Assembly.
4. KUNWAR SRIPAL SINGH, Member, Legislative Assembly.
5. SRI PARIPURNANAND VARMA, Behari Niwas, Kanpur, President of All-India Crime Prevention Society.
6. SRI T. N. KAUL, Advocate, Bahraich.
7. SRI J. D. SHARMA, District Judge, Lucknow, (now Judge, High Court).
8. SRI MAHESH CHANDRA, District Judge, Agra, (now Registrar, High Court).
9. SRI SHIVA RAM SINGH, Secretary, Board of Revenue, U. P., Lucknow (now Secretary to U. P. Government, Revenue Branch).
10. SRI GIAN PRAKASH, District Magistrate, Kanpur.
11. SRI S. C. KANWAR, Advocate, President, U. P. Lawyers' Conference, Dehra Dun (1957-58).
12. SRI D. C. KUKRETI, Advocate, Secretary, U. P. Lawyers' Conference, Dehra Dun (1957-58).

*After Sri J. D. Sharma was appointed as a Judge of the High Court of judicature in October, 1960, Sri S. D. Khare, District Judge, Allahabad, was appointed as a member of the Committee in his place.

Member-Secretary:

13. Judicial Secretary to Government, Uttar Pradesh, or in his absence the Additional Judicial Secretary to Government, Uttar Pradesh.

Terms of reference.

The terms of reference of the Committee as set out in the Government notification were as under:

(*a*) To enquire into the causes of (i) corruption, (ii) defects, and (iii) delay, prevailing in the proceedings of various classes of subordinate courts, viz., Civil, Criminal and Revenue, up to district level and to suggest remedies therefor.

(*b*) To examine rules of procedure and practices prevailing in the abovementioned courts, which contribute to (i) such corruption, (ii) high cost of litigation, (iii) harassment of litigant public and witnesses, and (iv) unnecessary delay and procrastination; and to suggest such modifications and changes as may be found necessary for obviating such defects.

(*c*) To explore and suggest ways and means by which the co-operation of the public, and particularly of the lawyer class, may be secured for eradicating the aforementioned evils.

(*d*) To examine the existing procedure and other laws as recently amended, and to suggest such changes in the same which may be helpful in removing corruption and unnecessary delay in their implementation.

(*e*) To suggest the advisability, as well as the structure of any permanent machinery, which might be set up in the State at district or higher level in order to avoid such defects in the Judicial Administration of this State and their creeping into the system in future.

Judicial Reforms Committee.

The problem of Law's Delays has been an ancient problem. Harassment and corruption prevalent in courts too have been of fairly long standing. Several attempts were made in the past to bring about reforms in the Judicial Administration with the object of securing speedier and less expensive justice to the citizen, yet never before was attention pointedly focussed to discover the causes that led to the alleged corruption, delays and harassment in courts. As recently as 1950, the State Government appointed a Judicial Reforms Committee, under the chairmanship of Mr. justice K. N. Wanchoo (now a Judge of the Supreme Court). The terms of reference of the Committee were as follows:

(1) To enquire into the system of administration of justice in this State with particular reference to—

(*a*) the causes accounting for delay in the disposal of cases and other proceedings;

(*b*) the rules of procedure and other factors which encourage unnecessary litigation and involve the parties in heavy expense; and

(2) To report—

(*a*) what reforms are desirable in the present system of administration of justice as will ensure to the people of the State justice expeditiously, at less expense and without unnecessary litigation ;

(b) what changes are required in

(i) the law of procedure, civil and criminal; and in other laws, and

(*ii*) in the rights of appeal, etc.,

so as to simplify the processes of law and bring justice within the reach of the common man;

(*c*) whether the system of trial with the aid of jury or assessors should be further extended, limited or eliminated and, if so, in what class or classes of cases;

(*d*) what steps are necessary to minimise the evil of perjury in law courts; and

(*e*) what should be the general set-up, powers and jurisdiction of the courts, original and appellate, for attainment of the object referred to in clause (*a*) aforesaid.

It will be observed from the above that emphasis was placed on delay and expense. The Committee produced a very valuable report by the end of 1951. As a result of the recommendations of the Judicial Reforms Committee certain changes in the procedural law were brought about, but even so much remained to be achieved.

Some attempts were also made to bring about improvement in the working of courts by issuing instructions from time to time. The working of Magisterial Courts was also examined for the purpose of bringing about improvements in their working, but all this effort did not bring about the desired result for the ailments persisted. A Committee for the Reorganisation of Revenue Courts was also appointed in 1946.

It may here be pointed out that never before was any committee concerned with the investigation of corruption in general, alleged to be prevalent in courts subordinate. It appears that in 1938, a committee which has been called " The Anti-Corruption Committee " was appointed by the United Provinces Government, but this Committee, as appears from a printed extract of the Report—and that was the only thing available to the Committee—dealt with the problem of corrupt officials only.

Problem of corruption in courts.

The problem of corruption in courts was not merely the problem of corrupt officials, but it was something more. It was a problem that was posed by a conglomeration of many factors arising out of the system, the personnel working that system, the persons who took recourse to that system, etc. So that this problem of corruption in courts could not obviously be tackled on the basis of the recommendations of the Anti-Corruption Committee referred to above.

First two meetings.

The present Committee met in Vidhan Bhawan at Lucknow, first on April 13, 1959, and again on May 4 and 5, 1959. At those preliminary meetings the Committee considered carefully

the various aspects of the problem and came to two broad conclusions. The first conclusion was that an appreciable amount of delay, harassment, as also an amount of corruption, could be eliminated by a careful revision of the rules of procedure, for it was found that many of the rules of procedure were out of joint with the times and needed, so to speak, modernization. The second conclusion at which the Committee arrived was that ways and means had to be found whereby public opinion could be mobilized against resorting to such methods or employing such means in the conduct of cases as were conducive to delays, harassment and which also brought in their wake corruption. The Committee had not only the advantage of the valuable suggestions of the U. P. Judicial Reforms Committee but also of the valuable suggestions contained in the Report of the Law Commission. The Committee examined the rules of procedure primarily with the object of making such changes in the rules as could bring about greater despatch and eliminate harassment and corruption.

Questionnaire.

The Committee drew up a Questionnaire consisting of 47 questions (vide Appendix A). In this Questionnaire the Committee divided the field of investigation into two main parts, the first dealing with the general problems of corruption, and the second, dealing, in particular, with the rules of procedure followed in courts. By the Questionnaire an attempt was made to get as much data as possible on each aspect (dealt with in the Questionnaire) as also to obtain in as large a measure as possible the opinion of the Bar, the general public and all such other persons and institutions as could throw light on the subject of the Committee's investigation.

In all about 3,000 copies of the Questionnaire were issued in July, 1959. August 31 had been fixed for returning answers, but later this date was extended in response to requests made for extension to September 15, 1959. In all 369 replies from various quarters had been received. The response from official agencies had been fairly good; from Bar Associations also the response had been good; the response from local bodies and Members of the Legislature was, however, disappointing. The replies were collated and classified to enable the Committee to have a clear picture of the opinion expressed in those replies.

Sub-Committees.

With a view to expedite the work of the Committee it was thought desirable to split up the Committee into sub-committees, and with this object the following three sub-committees were formed—the first for going into the rules of procedure and to suggest amendments therein; the second to find facts in regard to prevailing corruption; and the third, also fact-finding committee, for finding facts relating to delays and harassment:

(1) Sub-Committee on Procedure and Rules:
consisting of (1) Sri K. L. Misra,
(2) Sri J. D. Sharma,
(3) Sri Mahesh Chandra,
(4) Sri Shiva Ram Singh,
(5) Sri S. C. Kanwar,
(6) Sri T. N. Kaul, and
(7) Sri Gian Prakash,

(2) Fact-finding Sub-Committee on Corruption:
consistng of (1) Sri Govind Sahai,
(2) Sri Paripurnanand Varma,
(3) Sri J. D. Sharma,
(4) Sri Shiva Ram Singh,
(5) Sri S. N. Katju,
(6) Sri S. C. Kanwar and
(7) Sri Gian Prakash.

(3) Fact-finding Sub-Committee on Delay and Harassment:
consisting of (1) Sri S. N. Katju,
(2) Kunwar Sripal Singh,
(3) Sri Mahesh Chandra,
(4) Sri Gian Prakash and
(5) Sri D. C. Kukreti.

The Chairman and Secretary were Chairman and Secretary of each Sub-Commirttee.

Sub-Committee on Rules and Procedure.

The Sub-Committee on Procedure and Rules started its deliberations at Ranikhet on June 4, 1959, and continued its sittings there till June 13, 1959, and thereafter this Sub-Committee met at Lucknow in Vidhan Bhawan from July 27 to August 1, from August 31 to September 5, and September 22 and 23, 1959. During the aforementioned sittings this Sub-Committee completed the examination of the Rules of Procedure, both civil and criminal. The conclusions arrived at by the Sub-Committee were placed before the Committee and the Committee authorised the Chairman to place these conclusions before Government. Apart from a consideration of the rules of procedure, some other problems which required, in the opinion of the Committee, expeditious consideration by Government, were also considered by the Committee.

Interim report.

The Committee's recommendations on these matters were incorporated in its interim report dated November 15, 1960, which was submitted to the Government under a covering letter by the Chairman.

The work which the Committee did up to the stage when it submitted its interim report, involved a great amount of labour. The Chairman had received many requests from various persons and organisations to give oral evidence before the Committee. This offer undoubtedly heartened the Committee and its Chairman, for, if nothing else, this showed that there was, by and large, a great desire on the part of the people to co-operate with the Committee.

Addresses to Bar Associations.

It was considered essential not only to mobilise public opinion against corruption but also to elicit the full co-operation of the Bar in the task of eradicating corruption from courts. In order to achieve the aforementioned objects, the Chairman addressed members of the Bar at several places, in particular Ranikhet, Lucknow, Allahabad, Kanpur, Varanasi, Agra, Dehra Dun and Aligarh.

The Chairman impressed upon the members of the Bar their responsibility with regard to the eradication of corruption, delays and harassment in courts. It is satisfying to record that the effect of these addresses to the Bar was very encouraging. It was found that the majority of the Bar was thoroughly alive and interested in the problems which the Committee was out to tackle. A good deal of co-operation and earnestness was exhibited by everyone and every effort was made to place all information which was required by the Committee.

Spot surveys.

There was a desire expressed by members of the public and the Bar that the Committee should, in order to discover the true state of affairs prevailing in courts subordinate, make what may be called "spot surveys". A great deal of emphasis was laid by quite a few persons on the desirability of watching the actual functioning of Magisterial and Revenue Courts in order to find out the insidious methods which were adopted to bring about delays and to harass litigants for the purpose of making illegal gains.

Sub-Committees for Spot Survey.

After a careful consideration of the arguments and the material brought to the notice of the Chairman and the Committee, it was thought necessary to make spot investigations at some selected places for it could not be possible for the Committee to go to every district headquarters. It was also thought impracticable that spot investigations be made by the entire Committee and so it was thought desirable to split the main Committee into six sub-committees for the purpose of making spot investigations which included the examination of witnesses who came forward to give evidence.

The following table will show the names of the members of each Sub-Committee and the places to which they went for investigation:

Local investigations by Sub-Committees

Serial no.	Name of the district visited	Personal of the Sub-Committee	Dates of visit
1	Gorakhpur	1. Chairman 2. Sri K. L. Misra 3. Sri Govind Sahai * 4. Sri J. D. Sharma 5. Sri Mithan Lal	November 16 and 17,* 1959.
2	Varanasi	1. Chairman 2. Sri K. L. Mis a* 3. Sri S. N. Katju, M.L.C. 4. Kr. Sripal Singh, M.L.A. 5. Sri L. P. Nigam	November 23 and 24,* 1959.
3	Meerut	1. Ch irman 2. Sri K. L. Misra* 3. Sri D. C. Kukreti 4. Sri Gian Prakash 5. Sri C. B. Capoor	Deceber 7 and 8,* 1959.

Serial no.	Name of the district visited	Personnel of the Sub-Committee	Dates of visit
4	Dehra Dun	1. Chairman 2. Sri K. L. Misra 3. Sri D. C. Kukreti 4. Sri Gian Prakash 5. Sri C. B. Capoor	December 10 and 11, 1959.
5	Moradabad	1. Sri Paripurna Nand Verma. 2. Sri Shiva Ram Singh 3. Sri C. B. Capoor	March 4 and 5, 1960.
6	Bareilly	1. Sri Paripurna Nand Varma. 2. Sri Shiva Ram Singh 3. Sri C. B. Capoor	March 7 and 8, 1960.
7	Agra	1. Chairman 2. Sri K. L. Misra ** 3. Sri Govind Sahai * 4. Sri Gian Prakash 5. Sri J. D. Sharma 6. Sri L. P. Nigam 7. Sri Mahesh Chandra	April 4*, 5* and 6**, 1960.
8	Aligarh	1. Chairman 2. Sri S. C. Kanwar 3. Sri Mahesh Chandra 4. Sri L. P. Nigam	April 7 and 8, 1960.
9	Faizabad	1. Sri S. N. Katju 2. Sri L. P. Nigam	April 16, 1960.
10	Allahabad	1. Chairman 2. Sri K. L. Misra* 3. Sri T. N. Kaul 4. Sri L. P. Nigam	April 22 and 23,* 1960.

The Sub-Committees could not visit Azamgarh, Jhansi, Kanpur, Pauri Garhwal and Lucknow, though visits to these places also had been contemplated.

A request was sent to all Bar Associations, District Magistrates and District Judges of the places which were to be visited to furnish the Committee with the names of persons who were desirous of appearing as witnesses before the Committee.

Standard plan for spot investigation.

Spot investigations were made by the various sub-committees in accordance with a standard plan so that no important aspect of investigation could escape scrutiny.

It was agreed that at each place visited, among other matters, the following matters needed careful observation :

(*a*) Whether the workload of various courts and offices was reasonably manageable;

(*b*) whether the working conditions were conductive to efficiency or detrimental to it;

(c) whether officers properly planned their business;

(d) whether there was adequate supervision by presiding officers of their subordinate staff;

(e) whether there was any general tendency to be slack;

(f) how well or ill the present system of process serving worked;

(g) what practical difficulties were experienced by members of the Bar and their clients in getting accused persons out on bail within a reasonable time;

(h) whether complaints in regard to corruption etc. were expeditiously and effectively dealt with;

(i) what suggestions the Bar and members of the public had to make towards the ending of corruption, delays and harassment;

(j) whether there were any special problems in any particular district that needed solution.

Reasons for delay in submitting final report.

The Committee started functioning from April 13, 1959, so that it may appear to some that possibly the Committee could have finalised its work in a shorter time than has been taken. This view may have been justifiable if the members of the Committee could have devoted their undivided and whole-time attention to the task entrusted to it. But as it was, most of the members of the Committee, including the Chairman, had other pressing commitments and they could do the work of the Committee only as part-time occupation. The Chairman could not, in the larger interests of the community, be away from court for longer periods than he was away; similarly, the Advocate General, the two District Judges and other officers of Government, as also the members of the Bar who were on the Committee could not be away from their respective fields of activity for long periods at a time. The task of the Committee had, therefore, to be carried out after periodic adjournments.

The task which the Committee did was a very heavy one and included visiting of many district headquarters, examination of about 250 witnesses, making probes by spot investigations into the working conditions and other co-related problems, and giving thought and attention to all the materials collected in order to draw conclusions from them. Hence it could not be said that there was any avoidable delay in submitting its final report to Government.

Factors contributing to corruption, delay and harassment in subordinate courts.

It has to be remembered that several factors contributed to corruption, harassment and delays in courts subordinate. Some of these factors were socio-economic in their origin while others arose out of procedural inequities. The examination of the rules of procedure which was undertaken by the Committee on an extensive scale in the early stages of its investigation itself required a vast amount of time.

In the earlier stages of its work, the Committee considered the question of the adequacy or otherwise of the personnel which manned the courts, and the salaries which were paid to the ministerial staff of these courts and their offices and also the conditions in which they worked. The Committee

was of the opinion that inadequacy of salaries and poor working conditions did play a very significant part in softening the moral fibre of public servants and thereby making them more vulnerable to corruption. Though Sir Robert Walpole's century old dictum that "Every man has his price" may not have been true yet there could be little doubt that under the present-day social conditions every man had a breaking point and that this breaking point could be materially varied by a change in his economic and working conditions.

Delays and harassment were often the by-products of insufficiency and inefficiency; inefficiency itself often was the result of insufficiency. Therefore, it became necessary for the Committee to examine the question of the adequacy of the personnel available in courts subordinate and their offices to cope with the work.

The Committee carefully examined the strength of the judicial personnel for the strength of the judiciary, it found, had been fixed serveral years back. With the march of time, the awareness of the people of their rights had grown tremendously. Further, with industrialisation and all-round development of the country and still more with legislation touching larger and larger fields of human activity, the work of courts had increased beyond recognition. Courts were called upon to determine new disputes, resolve new controversies and decide new types of cases. In this connection it is necessary to remember that for the increase in the burden on courts it was not essential that there should be a marked increase in numbers: complications arising in causes also made for an increase of the burden. Crime had also increased, and not only that, the nature of crime had also become more compli cated. Criminal courts had to face the ingenuity of the sophisticated criminal, they were no longer faced with the old simple defences but with defences which were not easy to resolve in character. The burden on the criminal courts, it appeard to the Committee, had increased to an extent because of the unsatisfactory quality of investigations into crimes by the Police. It appeared to the Committee that the importance of efficient and honest investigation by the Police was not sufficiently realised by those who were in a position to influence its quality and honesty.

Unfortunately it was not realised sufficiently clearly that one of the main reasons for acquittals in cases could be traced to faulty investigations. It was essential to realise that large number of acquittals had serious repercussions not only on the crime situation but also on the social order generally. The question of investigations, therefore, had to engage the attention of the Committee and indeed quite an amount of oral testimony, as also written expression of opinion, centred round the question of the quality of investigations by the Police.

The Committee did not, however, go into the question of investigations by the Police in all its details because a Police Commission had been appointed by Government and this question

of investigations was, the Committee was informed, engaging the attention of that Commission.

In the succeeding chapters of this Report would be found the opinions and the recommendations of the Committee in regard to the general problem of corruption. It may however be pointed out, in passing, that the problem of corruption was, in its essence, a moral problem and any effective tackling of this problem could only be possible on a very wide basis, for tackling the problem in the isolation of any particular department was not likely to yield spectacular results.

During the course of its investigations the Committee found that one of the major avenues of corruption and harassment was provided for by the procedure, or rather want of procedure in getting accused persons out on bail. The Committee considered this question in all its aspects and an entire chapter has been devoted to this matter.

Service of summonses and obtaining certified copies of statements, judgments and other documents also provided a very lucrative source to the corrupt official and these questions, too, have been dealt with at some length and the recommendations in respect of these matters would be found in a later part of this Report.

Selection and training of the personnel who man the courts and its offices assumed tremendous importance when we realised that a good deal of inefficiency and harassment, if not corruption also, could directly be traced to either faulty selection or bad training or no training at all. Attention, naturally, was devoted to this very important question, and the Committee considers that its recommendations on these matters should engage the attention of Government and the High Court,

In the public mind the word "corruption" immediately conjures up the picture of a corrupt official: the people by and large are incapable of understanding, or do not bother to concern themselves with, the general problem of corruption, for, to them corruption is synonymous with a corrupt official. It cannot be denied that if the problem of the corrupt official could be successfully tackled, that is to say, if there were no corrupt officials, then, obviously, there would be no problem of corruption. The Committee has suggested a machinery for not only tracking a corrupt official but also for bringing him to book expeditiously and with certainty.

By their terms of reference the Committee were asked to explore and suggest ways and means by which the co-operation of the public, and particularly of the lawyer class, could be secured for eradicating the evils prevalent in the courts. Suggestions with regard to this would also be found in an appropriate place.

The Committee has also examined the advisability of having a permanent structure, either at the State or district level, in order to keep watch over the workings of the courts in order that the defects which we were out to remedy did not creep into the judicial administration again.

CHAPTER VI

GENERAL

Corruption, delay and harassment were in a sense connected maladies and these have had an ancient heritage for the problem of Law's Delays has been an ancient problem not only in our country but elsewhere also.

Many a time attempt was made to reform the Judicial Administration with the object of eradicating the evils and of securing speedier and less expensive justice for the litigant but so far complete success could not be achieved. Why this was so, needed some thought. Was it because there was something inherent in the problem which baffled solution, or was it because the problem had not earlier been tackled in all its aspects, or, again, was it because proper remedies were not applied after remedies had been known? Though the problem of corruption, delays and the consequent harassments was to an extent a baffling problem yet, in our opinion, it could not be said that the problem defied solution. In the past the measures which were taken were, subsequent experience has shown, not sufficient, possibly because these only touched the fringes, leaving the core to survive and grow with the passage of time.

Problem of corruption.

The problem of corruption was in a sense a moral problem and in that aspect of the matter, all that could be suggested was that it appeared incumbent upon the State to do all it could to raise the moral stature of the people. How this was to be done was a task in itself and the Committee did not feel justified in entering into this vast domain.

Moral stature of the people to be raised.

It would be interesting in this connection to note that the State Government had in 1952 appointed a Committee known as the Disciplinary Proceedings Inquiry Committee presided over by the late Pt. Govind Ballabh Pant, the then Chief Minister of the State. That Committee after recognising the existence of corruption prevailing in our society expressed the view that one of the principal steps which had to be taken to eradicate corruption was to establish and maintain confidence in our own character. The Committee suggested the following main steps in order to achieve the desired end :

Suggestions by the Disciplinary Proceedings Inquiry Committee to raise moral character of people.

> "(1) The national traditions should be disseminated continually and actively among the people by means of educational curricula and through the agency of the press, the radio and other means of publicity. The text-books of the different grades in schools and colleges should be revised so as to include—
>
> (i) substantive teaching of events in Indian history and the national epics which emphasise the moral and ethical values inherent in those events, and

(ii) carefully selected extracts from Mahatma Gandhi's teachings which bring out the special points of Gandhian philosophy.

The preparation of revised text-books should be taken in hand at once and care should be exercised that they do not become vehicles of sectarian precepts and teachings.

(2) Agencies responsible for the control of public entertainment such as the cinema, the radio, dramatic performances, etc., should be required to emphasise, without prudery, the portrayal of high and strong character in the various episodes of our epics and history.

(3) An expanding programme of community effort through physical labour should be built up by all. Concerted physical labour in physical tasks is a great builder of morale, of robustness of character, and of that fraternity in which our Constitution seeks us to combine as a nation."

These suggested steps insufficient for obtaining quick and spectacular results.

No one could possibly have any serious dispute about the feasibility of bringing about a change in the moral fibre of the people and their outlook on corruption by resorting to the methods suggested above by the Disciplinary Proceedings Inquiry Committee. The question, however, arises whether such programmes could yield any spectacular results within a short time. In our opinion, the very nature of the remedy suggested was a long-term one and one could not expect to obtain quick and spectacular results by resorting to these remedies.

Those who corrupt public servants are equally or even more blame-worthy.

There are always two to a corrupt bargain, namely the man who offers the temptation and the man who succumbs to it. It is hardly possible to accurately apportion blame between the two on the moral plane, but if one were called upon to make an apportionment, then the one who offers the temptation would probably, in nine cases out of ten, have less justification than the man who succumbs to it. This is so because our investigations have shown that the economic condition of a certain class of public servant has been so precarious that they had not the necessary economic stability to fortify themselves against inroads being made into their moral sanctum.

Exaggeration about prevailing corruption in subordinate courts.

It is possible even at this early stage to say that the extent of corruption prevailing in courts subordinate was not as large as loose talk made it to appear. There was a tendency amongst a certain class of the people to lightly accept allegations of corruption without any attempt being made to check or verify the truth of the allegations. There was also at the present moment a dangerous tendency of referring to corrupt practices lightly and of accepting these practices as an inevitable part of our social order.

Existence of tipping in subordinate courts.

There was no doubt on the results of our investigations that there was, what may be called, a good deal of tipping namely small amounts of money given, more or less, voluntarily in the hope of either getting work done expeditiously or to win the goodwill of the petty official who had to deal with the

case in its early stages. It was necessary to draw a distinction between this kind of gratification paid and that payment which was made with the object of either getting an unfair advantage over the adversary or was paid because the petty official refused to render the service to which the giver of the gratification was legally entitled without paying the gratification. What had to be borne in mind was the difference that there was on the moral plane between one kind of payment and the other kind; where there was the slightest moral turpitude involved in the payment, the payment became suspect and could not be countenanced. Applying the test which we have mentioned above, tipping in a sense could not be viewed with that amount of strict disfavour as those other payments which were made because they had to be made in order to obtain the services to which a litigant was entitled under the law.

Distinction between tipping and bribery.

We emphasise that it is not our intention to justify even tipping or to say that tipping was a good thing and should continue. What we wanted to say was that tipping should be viewed separately from bribery and corruption and that one should not be confused with the other, and on the basis of that confusion magnify the extent of the corruption prevailing in courts subordinate. The service rendered by the petty official in courts subordinate to the litigant somehow lent itself to tipping and hence it provided opportunities for such tipping. We shall later suggest ways and means for eliminating even the opportunities for tipping so that if and when our suggestions are fully implemented, even the evil of tipping will, we hope, disappear to a very large extent.

Opportunities for tipping also to be eliminated.

It is our belief that with a substantial increase in the emoluments of the subordinate staff employed in the courts subordinate and with reasonably proper working conditions tipping and bribery are bound to abate to an appreciable extent, though we do not feel bold enough to assert that an improvement in these two spheres alone was likely to completely eliminate corruption. Some impression could be made on corruption if the working conditions and the economic condition of a public servant improved. It was very difficult for a man in hunger and pain to remain honest and not to succumb to the temptation or receiving something offered which could alleviate his hunger and suffering.

Increase in emoluments and improvement in the working conditions of subordinate staff would abate tipping and bribery.

We, however, wish to make it clear that we do not subscribe to the view sometimes expressed, that a substantial rise in the salaries could alone end corruption. We wish to point out that no Government can increase salaries to such level as could outweigh illicit gain.

Corruption in the larger sense involves moral degradation. This moral degradation has been noticeable in larger measure in recent times. The U. P. Disciplinary Proceedings Inquiry Committee while taking note of the prevalent corruption in our society made the following observations:

Corruption involves moral degradation.

> "Opinions differ regarding the extent of corruption in our society. But it may be stated that any appraisal of it

based merely on the events of the last ten or twelve years would not give a correct picture. An abnormal situation has existed during these years, firstly, due to wartime economy and, secondly, due to the passage of the country through the transitional stage after its emergence from bondage. The scarcity of food and other materials, resulting from the War, led to the enforcement of controls, which put increasing temptations in the path of people the world over, and some looseness is inevitable in the period of transition".

General fall in standards of honesty led to rise in moral depravity.

Whatever may have contributed to this, the fact remains that there has been a general fall in standards of honesty and integrity and there has been a proportionate rise in moral depravity and the consequences which follow such depravity. What has contributed to all this is not easy of statement. What, however, can with some amount of certainty be stated is that the results that we now see are to an extent, due to the fact that there was no concerted effort made by the community, as such, to improve the moral fibre of the people.

Corruption, a kind of malady of the mind.

Corruption was apparently a kind of malady of the mind—something that arose out of cupidity and such similar human failings. If this failing was noticeable in a comparatively small group of the community, then possibly one could view it with a certain amount of equanimity but, as it is, one finds that corruption was prevalent on a very large scale and embraced practically every sphere of governmental and commercial activity of the nation. There was, therefore, something basically wrong somewhere. It is not our function to probe into the matter to such depths as to discover what was wrong in the bases of the people and to suggest ways and means of remedying it. We have to content ourselves with recording the fact that there was corruption prevalent on a wide scale, embracing a very large section of the community and its activities. The fact that we have just stated leads us to consider the question as to whether when corruption was prevalent to such an extent and when it contaminated so many avenues of public service, whether it was possible to tackle the problem in isolation, namely tackling the corruption prevailing in courts alone.

Difficulty of tackling the problem of corruption in courts in isolation.

Public apathy towards corruption.

We noticed that there was great public apathy towards corruption; corruption, we found, had almost been accepted by society as a part of the social order. We wish to emphasise that this state of affairs was a sad commentary, as sad as it could be, on our social and moral make-up. It is our earnest hope that every effort would be made by those that can and should, to wean society from the aforementioned sad outlook. Every one, who has an opportunity to influence public opinion, to whatever extent it may be, should use his influence towards creating a public sense against tolerating corruption. It would end corruption largely if there was social disfavour and ostercism of officers who had the reputation of being corrupt. As it is, a corrupt official today moves through society with the same sang-froid as does an honest, hard-working and exemplary officer. If this is so—and we painfully find that it is so—then where is the charm and the recognition of an officer who

Public opinion to be aroused against corruption and corrupt official to be looked with disfavour.

is honest and God–fearing. It is no use saying that a man should be honest not for the sake that his honesty should be recognised, but for the sake of honesty itself. But it is not always that a man can continue to be what he should be without even his vanity or ego, in some shape or form, being tickled or obtaining some kind of approbation for it, for man's desire for approbation is so innate and deep-rooted that it has to be recognised.

Recognition for honesty.

A concerted drive against corruption on all fronts, a mobilisation of public opinion against corruption and a genuine attempt made to root out corruption on all fronts and from all government departments was essential for the success of any schemes drawn up to end corruption in any particular department or sphere of State activity.

Concerted drive against corruption on all fronts.

The extent of the prevailing corruption and the agitation that it has caused to the public mind required, in our opinion, certain remedies which could make a quick and certain impression on corruption. One of the methods by which an impression could be made on the public mind as also on the corrupt official was to find out for sure the corrupt official in whatever department he may be functioning and to deal with him quickly, surely and even ruthlessly.

Finding out corrupt official and punishing him would create a good impression on public mind.

The problem of corruption has to be viewed in two clear cut divisions, firstly, the general problem of corruption, and secondly, the particular problem which was posed by the corrupt official. By and large, corruption conjures up in the public mind a corrupt official. The general public is oblivious, or does not concern itself with the general problem of corruption. The common man is generally not troubled about the moral degradation that corruption brings about in the social system. Immoral behaviour or behaviour unbecoming an officer does sometimes attract attention and causes resentment in certain sections; even so the common man mostly remains oblivious of these. The common man is not generally troubled by the evil effects which this problem of social misbehaviour poses for an administrator. The common man is concerned and is hurt by the corruption of an individual officer here or an individual officer there. His problem is the problem of the corrupt official and the common man wants that there should be no corrupt official and that if there was a corrupt official, then that corrupt official should be found out and punished.

General problem of corruption and particular problem of corrupt official.

We reached the conclusion at an earlier stage of our investigations that a good deal of corruption, prevalent in the courts below, directly arose out of the fact that rules of procedure were complex, outmoded and time consuming and that a rationalisation of these rules of procedure could, to an appreciable extent, reduce corruption. We, therefore, in our interim report suggested large scale amendments to rules of procedure both civil as also criminal. We have incorporated these suggestions in subsequent chapters of this final report also.

Simplification and rationalisation of rules of procedure can reduce corruption appreciably.

Corruption in criminal and revenue courts more than in civil courts.

We noticed during the course of our investigations that there was more corruption prevalent in criminal and revenue courts than in the civil courts, and one of the reasons for that was that some of the officers who presided over the revenue and the criminal courts had not imbibed the great tradition of judicial impartiality and clean dealings. Tradition played an important role in keeping succeeding generations on a particular path. If traditionally the path was a straight one then succeeding generations had little difficulty in keeping to that straight path while if there were no traditions then the generations that followed found it somewhat difficult to keep to the straight path. The subordinate criminal and revenue courts functioned during the British regime towards a particular end—the criminal courts functioned to maintain law and order, as the Britisher understood it, at any cost and even at the sacrifice of many of the values which free people would prize. The Britisher wanted his revenues to be collected and he did not bother to see how they were collected so long as they were collected in time. The civil courts, however, did not work to any particular end. The Britisher maintained, it has to be admitted, a sense of justice and fairplay so long as that sense did not come into conflict with his sense of patriotism to the Empire or his expectations of monetary gains out of the Empire. In conflicts between man and man and even, at times, between the citizen and the State, the Britisher showed exemplary fairness. This tradition of justice and fairplay permeated the civil courts under the British regime and the tradition so built was handed down from generation to generation.

Difference due largely to traditions prevailing in the two sets of courts.

Entire judiciary should be placed under the administrative control of High Court.

It was in our opinion essential that every one who had to do justice, namely, decide cases in accordance with law should be part of one system of administration of justice and that every effort should be made to integrate cadres towards that end and to place them under one administrative control, namely, that of the High Court. We have, in order to achieve the above object, at a later stage suggested an integration of the cadre of Magistrates and the Munsifs.

Investigating agency into cases of corruption to inspire public confidence.

In order to make an impression on corruption it was essential that the corrupt official, whatever his stature or status, should be discovered as quickly as possible and should be brought to book with speed. Complaints against corruption had to be investigated quickly and by an agency in which the people had confidence. It was no use asking an agency to investigate into the complaints regarding corruption which itself was suspect in the public eye. Great harm is done in having complaints against corruption investigated into by agencies in whom the people, by and large, had no confidence.

False complaints to be countenanced.

The Committee has noticed a tendency to make complaints against officers lightly and mainly for the purpose of satisfying some private grudge or to wreak vengeance. Even so, investigation into complaints where the complainant was prepared to have the matter investigated into, should be made over to an agency which should be impartial and in which the public could

have confidence, for investigation. If such a complaint was found to be false, then action was to be taken against the complainant in order to curb the tendency of making frivolous complaints.

There has been a tremendous increase in recent times in anonymous complaints. These in the opinion of the Committee should be ignored and it should be made known that any one who has a complaint should make it disclosing his identity, to an officer or agency which should be established for receiving complaints and that anonymous complaints were not going to be countenanced. Countenancing anonymous complaints has a very evil effect; it has the effect in a sense of undermining the moral fibre of the anonymous complainant. It affects the officer against whom the complaint is made, for even though, the complaint may not be investigated into or given effect to, yet the mere fact that there is a complaint reaching a higher officer does to some extent create a kind of prejudice in the mind of the officer against his subordinate against whom the complaint is made, however much the officer may try to feel unbiased. A good deal of harm was likely to be caused to the prestige and status of the public services if any encouragement was given to anonymous complaints. Anonymous complaints were worse than backbiting, and backbiting could never be recognised as a desirable course of human conduct; it degraded the one that backbites and also the one that countenances it.

Anonymous complaints have a demoralising effect. They should be generally ignored.

The Committee has at a later stage suggested a skeleton of a procedure for dealing with complaints against corruption and for dealing with the corrupt official. It was essential that the public should have confidence that a genuine complaint against an official would be impartially investigated into and action taken thereon by an impartial and reliable body of men. Putting corrupt officials before courts for trial was beset with certain procedural difficulties. There was difficulty in that evidence of repute was not, as the law stood at the present moment, admisssible in deciding cases dealing with corruption even though an attempt had been made to letting in this kind of evidence under the Prevention of Corruption Act. The Committee would later suggest a change in the law for dealing with the corrupt official. It may in that connection be necessary that certain sections, namely sections 161 to 165, 165-A of the Indian Penal Code which deal with bribery and corruption have to be taken out of that Code and given a place in the new legislation contemplated for dealing with cases of bribery and corruption. This will make one consolidated law dealing with the corrupt official and will not be open to the charge of being discriminatory in its scope.

Genuine complaints to be impartially investigated. Separate machinery for investigation and trial of cases of corruption against public servants.

The entire attention of the committee was focussed to probing into the activities which are conjured by three simple words—"corruption, delays and harassments". The scope appeared, in the first flush, quite simple and to many the problems raised appeared very easy of solution, but the truth of the matter was that the problem was not as simple as it appeared, and certainly not the solution simple.

No simple solution for the problem of corruption, delays and harassment.

Corruption, delays and harassments inter-connected.

The three things, corruption, delays and harassments, though apparently disconnected matters, yet in the field of investigation which they created they consistently remained in an unitary focus, for the one reacted on the other and that reaction in its turn created other joint and unified reactions. Corruption resulted in delays, and delays brought about corruption, and the two together brought about harassment and each one in its isolation also created harassments.

Delay as by product of insufficiency and inefficiency.

Delay very often is the by-product of insufficiency and inefficiency, but apart from this, delays come about because of unnecessarily complicated and time-consuming rules of procedure. These, namely the procedural part, we have already tackled at another place, and we believe that if our recommendations on that score are implemented then a good deal of delay and the consequent harassment is likely to disappear.

Delay due to dilatory tactics by litigants.

In connection with delays, it will not be out of place to notice that a certain amount of delay is sometimes caused, or at any rate attempted to be caused, by parties in order to seek personal ends. In this attempt, which is colloquially known as 'delaying tactics', some members of the Bar lend their willing hand. These delaying tactics could and should be thoroughly discountenanced by all courts and it admits of very little doubt that if judicial officers are vigilant and firm, then no one could, except possibly in very very rare cases, succeed in these delaying tactics. Fortunately these delaying tactics are not countenanced or resorted to by the Bar as such nor do judicial officers as such succumb to it. Nevertheless, there are cases where resort is taken to such tactics and our intention in making a reference to it is to draw pointed attention to this matter so that both the Bench and the Bar do not let these tactics survive in any appreciable measure.

Limit to the increase in personnel.

The question which arises and is one of considerable importance in its fundamentals is how far can sufficiency—sufficiency in the field of personnel—be achieved if the pressure of litigation keeps on the increase in the manner in which it has during the last two decades. It cannot be denied that a certain ceiling has to be put on increasing the number of judicial officers for deciding cases, but the trouble that arises is how to get to discover the ceiling. Is the ceiling to be a sliding one, namely, varying in proportion to the rise and fall in the litigation figures over a certain number of years, or have we to discover a method by which we could, in a sense, train the growth or ungrowth—if we may say so—of litigation in order that it may be manageable by the number of men available for the job at its maximum capacity.

Litigation to be kept within limits.

Very few will disagree that it is desirable that litigation should, in the social interest, remain within manageable limits of the personnel manning the courts.

Frivolous litigation—how to check it.

There is no dearth of evidence to show that there is a certain amount of litigation that can be characterised as frivolous litigation : litigation which, to the knowledge of the party, has no merits. The question naturally arises why does such litigation make its appearance. One obvious answer is that such

litigation is sponsored to satisfy the sadistic pleasure in certain individuals. Social education alone can counter this evil, but apart from social education this evil should and can, in our opinion, be considerably minimised by providing safeguards in the law and by appointing judicial officers who have the mental and legal equipment to discover such bad causes and scotch them in their inception. In this connection it would be interesting to notice what Lord Macaulay said in regard to this matter in his Minute dated June 25, 1835 (from which the Law Commission has extensively quoted at pages 487, 488 and 489 of Vol. I of its 14th Report). He said :

> "It is undoubtedly a great evil that frivolous and vexatious actions should be instituted. But it is an evil for which the Government has only itself and its agents to blame, and for which it has the power of providing a most sufficient remedy. The real way to prevent unjust suits is to take care that there shall be just decisions. No man goes to law except from the hope of succeeding. No man hopes to succeed in a bad cause unless he has reason to believe that it will be determined according to bad laws or by bad judges. Dishonest suits will never be common unless the public entertains an unfavourable opinion of the administration of justice. And the public will never long to entertain such opinion without good reason. If the subject were not one which most deeply concerned the welfare of the people there could be no better object of ridicule than a Government which constitutes its courts of law in such a manner as to give fraud an advantage over honesty, and then fines every man who goes to such infamous places."

Raising of court fees not sufficient to check frivolous litigation.

Expediencies like raising of court fees and making litigation generally more expensive was unlikely to have a deterrent effect on frivolous litigation. It, however, was likely to spell disaster for the man who had a genuine cause.

Advisability of finding methods to simplify and curtail litigation.

The pressure on courts has been out of all proportion to the capacity of the courts to deal with the volume of work with expedition. We feel that the time has come when the legal profession and the academic lawyer should pool their genius together to work out a scheme under which it could be possible to find summary procedures, a system of compulsory arbitration, a particularly indigenous pretrial technique, etc. to relieve courts of the burden of what may be called petty litigation. It is interesting in this connection to notice that in America the question of delays came up for a lot of criticism, and many solutions were offered. Conditions in America were obviously different, but there was an under-current of similarity in the circumstances that contributed to delays. We must notice that in America the Bench and the Bar put their heads together to find out methods by which the courts could be relieved of the unnecessary pressures on them. This was also necessary in our country, and we have no doubt that the Bar and the Bench will rise up to the occasion and tackle that part of the problem of the delay which may remain after our suggestions to

eliminate them have been implemented. We should like here to emphasise that delay is not inherent in the judicial system that we have inherited. Delays make their appearance and mar the administration of justice because the personnel through which the administration was run could not rise up to the demands made on them.

Question of placing restrictions on appeals.

That appeals, in a sense, bring about delays can admit of no doubt: the fact that appeals mean delay cannot necessarily entitle us to recommend the abolition of appeals as such. What we, however, wish to point out is that a rational reapprisement of rights of appeal was necessary, for it cannot be denied that multiplication of appeals has, in a sense, the effect of increasing the possibility of a denial of justice to the poor, inasmuch as the poor find it difficult to secure funds for fighting appeals.

Dean Pound, in his "Original Reform Programme", said this :

> "The system of committing petty cases to Justices of the Peace subject to appeal to some superior court and review of its judgment by a court of appellate jurisdiction is often a denial of justice to the weaker litigant. It compels men to forego just claims against those who can afford to litigate to the end because of the delay and expense involved in asserting them. Petty cases demand good judges no less than cases involving larger sums. The judges to whom such causes are committed ought to be of such calibre that but one review should be necessary and that confined to questions of law".

In our opinion the observations made by Dean Pound were of general application and deserved very very careful consideration. The economic burden which piles up due to rights of appeal was a social problem. As the law stands, a judge cannot place a limit on the freedom of action of a litigant in regard to an appeal. In this connection it must be realised that in most modern States the appeal is not a *right* but a privilege and may be taken only in the discretion of the court of appeal. No appeal on technicalities or on matters without merit can ever get by an English or Canadian Judge.

The problem of curtailing appeals to be explored by legal profession.

It appears to us obvious that the duty must fall on the legal profession to create and keep in repair a practical appeal system, for the present system serves only to increase cost to both litigant and tax-payer and renders it more and more difficult to get real justice.

Each of the things we have just suggested would entail deep study and, in a certain measure, some amount of research for which more time was necessary, for the research part of it would entail many complicated investigations. We are, however, of opinion that this has to be done at some stage for in a democratic society courts have to function and there has to be a certain amount of litigation in respect of not only the liberty of the citizen but also in regard to his contractual rights, his property rights, etc. Raising of disputes is sometimes a sign

of weakness, and, in certain circumstances, it has a disruptive tendency which, though generated by a small source, has its ramifications on the social order, and, therefore, it is essential that because of this there should be a deeper probe into the problem and a satisfactory solution arrived at.

Delay defeats justice and multiplies litigation.

It has been felt that unless courts are able to expeditiously decide causes the judicial process instead of allaying human antagonism may aggravate them, for there persists in it an inherent tendency for litigation to increase itself. Litigation seems to feed and grow upon its own processes. We also believe that the more courts, the more judges, the more lawyers, the more laws mean material or even incentive to more litigation. We respectfully agree with Dean Pound when he said that the primary purpose for which a system of justice was evolved was to allay and heal social friction, to prevent waste and not to bring about the state of affairs that one notices at times in respect of the judicial process.

CHAPTER III

REASONS FOR THE CHANGES SUGGESTED IN THE PROCEDURE OF CIVIL COURTS

The law of procedure has, from time to time, undergone several changes. The Judicial Reforms Committee suggested a number of changes in the law of procedure. Some of those changes were implemented, but even so the scrutiny given to the rules of procedure by the Committee revealed that further changes could profitably be made which could in a large measure eliminate opportunity for delays, harassment and corruption. Some of the rules of procedure have very often been found to provide unscrupulous parties loop-holes through which they could bring about, if nothing else, delay in the progress of a cause.

Some of the rules relating to the service of processes, issue of certified copies, inspection of records and execution of decrees appeared to have contributed to delays, harassment and corruption. Process serving and execution of decrees have led to the largest amount of corruption; finding ways and means for eradicating these presented the greatest difficulty to the Committee. The Committee shall deal with these matters in separate chapters.

The various sections of the Code of Civil Procedure and its Orders and Rules in which amendments have been suggested will now be dealt with and while dealing with these a brief statement of the reasons which led the Committee to suggest the changes would also be indicated.

Section 42, Civil Procedure Code

Powers of court in executing transferred decree.

This section was last amended by the State Legislature in 1954. The object with which the amendment was brought about was to give the transferee court all the powers which the court that passed the decree had, in order to obviate the necessity of now and again approaching the original court that passed the decree, to obtain certain types of orders which could not, as the section previously stood, be made by the transferee court. The working of the amended section has, however, shown that the purpose with which the amendment was made in 1954, had not been achieved. Some courts interpreted the section to mean that when a decree of a Small Cause Court was transferred to a Munsif's Court for execution the latter could only have that power which the Court of Small Causes had in execution of decrees. Whether this interpretation is right or wrong is beside the point, but what is in point is that there is a conflict of view on the amended section as it stands today. In the opinion of the Committee a redrafting of this section was desirable and with this end in view the amendment which the Committee has suggested would be found in Appendix B, serial 1.

Section 80,Civil Procedure Code

If notice to Governmnet at all necessary before filing a suit.

The provisions of section 80 have led to delays, harassment and even to denial of justice in some cases. Opinion has been expressed in certain quarters that section 80 is more in the nature of an impediment to quick disposal and fair trial of cases in which the State or the Union or a local authority is a party rather than a provision that is conducive to quick disposal and fairplay. It was also stated that grave injustice happened in cases where the object of the suit got defeated by the delay which was occasioned by the time fixed for the notice. The Committee considered both the points of view with care and it was of the opinion that there was no justification for completely eliminating the provisions of this section, but it should be retained with suitable amendments.

Notice not necessary in urgent suits.

The criticism that the mandatory requirements of a notice under this section, even in cases in which the relief claimed was for an injunction, defeated the object of the suit because of the delay that had to be incurred due to the period of the notice, could be eliminated by making an exception in regard to notice in respect of suits where the object of the suit was likely to be defeated by the giving of the notice. In the opinion of the Committee exception in regard to notice should also be made in the case of those suits which were filed under the Zamindari Abolition and Land Reforms Act and where Gaon Samaj and other such bodies had to be impleaded as parties along with the State.

Other exceptions.

Substantial compliance.

It was further felt that a substantial compliance with the provisions of this section was all that should be necessary. Mere formal defects in the service of notice or in the despatch of notice should not be visited with the penal consequences of a dismissal of the suit. In cases where there was substantial compliance, inasmuch as the department of the Government which had to have notice of the proposed suit did have such notice the compliance with the requirements of the section should be deemed to be sufficient. Any costs which Government may have had to incur because of a formal defect in the notice could easily be compensated by awarding costs irrespective of the result of the suit. Therefore, the Committee suggests that section 80 be amended as shown in Appendix B, serial 2.

Oroder I, Rule 8, Civil Procedure Code

Representative suit.

The idea of a Representative Suit is to eliminate the necessity of having everyone interested in the cause before the court. Experience has shown that the provision in its present form has been utilized for delays and harassment by filing applications off and on, on behalf of some one or the other from amongst the public to be made a party to the suit. This tendency needs being put a stop to and, therefore, it is proposed to empower the Court to appoint one or more persons having the same interest in the suit to continue the suit or defend it on behalf of or for the benefit of all such persons as are interested in the suit. Accordingly an amendment has been suggested as at serial 3 of Appendix B.

Order V, Rules 3, 4, and 4-A Civil Procedure Code

Personal appearance of parties.

It appears proper to delete rule 4 of Order V which fetters a court's right of ordering the presence of a person residing beyond the local limits of its ordinary original jurisdiction or beyond a particular distance from the court house to appear before the court. It would be in the interest of justice to give the court a discretion in the matter of personal appearance of such a person. As such, simultaneously with the deletion of Rule 4 an addition of sub-rule (3) in rule 3, Order V, is also proposed. Rule 4-A added by the Allahabad High Court may in the circumstances be renumbered as rule 4. The proposed amendments will be found at serial 4, Appendix B.

Order IX, Rule 5, Civil Procedure Code

Period for taking fresh steps for serving an unserved defendant to be reduced.

By rule 5 of this Order the period for taking fresh steps for serving an unserved defendant is three months. Generally plaintiffs who want to delay the disposal of a suit wait till the last for taking steps although they could easily take steps earlier. This causes unnecessary delay in the progress of a suit. Further, in certain cases where the plaintiff has lost interest in the suit because of a compromise or some other reason and he does not thereby take steps, the court has to wait for three months before it can strike off the suit from the register of pending cases because of the period prescribed under this rule. The Committee is of the opinion that this period of three months should be reduced to six weeks. No hardship is likely to occur in a case where the plaintiff cannot after due diligence take steps because this rule gives a discretion to the court to grant extension of time to the plaintiff on proper cause being shown to take steps. The proposed amendment is suggested at serial 5, Appendix B.

Order X, Rule 2, Civil Procedure Code

Clarification of pleadings.

Not only delay, but proper disposal of a cause is often put in jeopardy because courts fail to clarify pleadings where clarification is necessary or to pin down parties to particular points arising out of their respective pleadings. Often examination of parties can assist framing of proper issues and thereby cutting out irrelevant evidence. As such it appears necessary to amend rule 2 of Order X with a view to lay stress on the clarification of pleadings. An amendment has been accordingly suggested as at serial 6, Appendix B.

Order XIV—A, Civil Procedure Code

Date for final disposal of suit to be fixed immediately after framing of issues.

There appears to be no provision in the Code for fixing a date for the final disposal of a case which cannot be disposed of at the first hearing and at which only issues are framed under Order XIV, rule 1 of the Code. It appears necessary, therefore, to make a specific provision in the Code empowering a court to fix a date for the disposal of the suit and it is thought desirable that the date for the disposal of a suit should be fixed by the court immediately after it has framed issues in the suit. It has been found that considerable delay in the

progress of a suit takes place because there is no provision in the Code under which a court can call upon a party to summon its witnesses within a time appointed by the court. The result is that parties take steps for summoning their witnesses perilously near the date fixed for final hearing with the result that very often the service of summons is not affected on the witnesses and the parties seek adjournments which courts very often allow. If a date is fixed immediately after issues have been struck and the court directs parties by an order to take steps by a certain date then the likelihood of summonses returning unserved on witnesses would be considerably minimised. In the opinion of the Committee, therefore, it is necessary to provide for all this in a separate order which we propose should be numbered XIV-A. A provision is thus being made by which the court would be bound first to fix a date for the final disposal of the suit immediately after issues have been struck and secondly to fix another date by which date parties who wish to have their witnesses summoned, should make applications for issue of such process. This Order XIV-A, should be headed "Fixing of dates for final disposal and for parties to take steps for summoning evidence." The proposed amendment appears at serial 6-A of Appendix B.

Intermediate date to be fixed for making application for issue of summons to witnesses.

Order XVI, Rule 1, Civil Procedure Code

Often parties do not summon their witnesses in time. This causes undue delay in cases. As such it appears proper that the court should fix a time within which a party should take steps for the summoning of his witnesses and if witnesses are not summoned within the time allowed, the court should have the power to refuse to summon witnesses. As such addition of a proviso to Order XVI, rule 1, is suggested as given at serial 7, Appendix B.

Steps for summoning of witnesses to be taken within a fixed time.

Order XVII, Rule 1, Civil Procedure Code

It has been noticed that many adjournments are granted on the ground that the witnesses of a party are not in attendance. Often this absence of witnesses is because of the failure of the party to take steps to serve witnesses in time. It appears proper not to allow an adjournment to a party on the ground of the absence of a witness, if such witness was not summoned according to rules prescribed for summoning witnesses. Sometimes parties take responsibility on themselves to serve a witness. In such cases if the party fails to effect service then an adjournment should not be allowed on that ground. Accordingly amendment of the proviso to Order XVII, rule 1, has been suggested as given at serial 8, Appendix B.

No adjournment for absence of a witness due to party's fault.

Order XVIII, Rule 2, Civil Procedure Code

The provisions of Order XVIII, rule 2, are rarely complied with by courts. The late Sir Tej Bahadur Sapru, in a note, dated December 6, 1922, which forms part of the Report of the Civil Justice Committee, 1924-25, said this :

"Apart from this difficulty about pleadings, there is another omission of which the subordinate Courts in the Province of Agra, with which I am familiar, are almost invariably guilty. They very seldom follow the Code of Civil Procedure in the matter of the opening of a case. They have inherited the notion from olden times that it is waste of time to have a case opened by counsel. The result of this is that it is very seldom that one comes across a trial Judge, who during the trial of the case knows precisely what the points at issue are and who can give decision on the spot as to whether a particular evidence sought to be introduced in the case is or is not relevant."

Opening of case.

Brief record of the statement of the case.

If the malady has persisted even to this day in spite of attention having been drawn to it, it is necessary in the interests of proper disposal of causes and of saving time to make it obligatory for a Judge to make a record of the salient points, at any rate, of the "opening".

An amendment to Order XVIII, rule 2, has, therefore, been suggested as at serial 9, Appendix B.

Order XVIII, Rule 5, Civil Procedure Code

Recording of evidence.

It has been considered proper that evidence may be allowed to be recorded from the dictation of the Judge in open court. This suggestion has been made by the Committee with the idea that a Hindi typewriter and a typist should be provided to every Civil Court to facilitate dictation by the Judge of the evidence. This change will have the additional benefit of quicker and more legible recording of evidence and would also relieve the Judge of the dull mechanical drudgery of recording evidence in his own hand. It may further be pointed out that at present the parties generally obtain copies of statements of witnesses surreptitiously and often they have to do so because through the normal channel they cannot get copies in time. For example, for the purposes of arguments a party may need the statement of a particular witness recorded just the same day. If the statements are typed out to the dictation of the Judge duplicate copies can very easily be prepared simultaneously and can be issued to the parties, shortly after the close of the evidence of the witness. This will eliminate corruption in such matters. The amendment proposed is at serial 10, Appendix B.

Order XVIII, Rule 8, Civil Procedure Code

This is to be amended with the same end in view as rule 5 of Order XVIII. The amendment has been suggested at serial 11, Appendix B.

Order XX, Rule 1, Civil Procedure Code

Pronouncement of judgment.

It appears desirable that stress be laid on the fact that judgment in a case should be pronounced as far as practicable soon after the hearing and that whenever a judgment is not delivered on the date on which the hearing closes then a date for such delivery of judgment should be fixed on the very day on which

the nearing closes, otherwise, often not only delay is caused in fixing a date for the delivery of judgment, but also parties have difficulty in knowing the date fixed for delivery of judgment. Often parties have to spend money in the office to find out the date when the judgment is going to be delivered. Accordingly an amendment to rule 1 of Order XX has been suggested as at serial 12, Appendix B.

Order XX, Rule 7, Civil Procedure Code

Under existing rule 7, the decree is to bear the date on which the judgment was pronounced. This causes hardship in cases where, as often happens, the decree is prepared after a lapse of time. The period of limitation for filing an appeal is reckoned from the date of the decree and if the decree is to bear the same date as that of the judgment and if the decree is drawn up at a much later date then often the time available under the Limitation Act to a party for filing the appeal is curtailed, for the appeal is against a decree and not the judgement. Even if a party is entitled to have the period requisite for obtaining the copy of a decree excluded this does not fully compensate the loss of the period sustained by the party for the delay in the drawing up and signing of the decree, for copies of decrees are delivered quicker than copies of judgments because there is less copying work to be done in the case of the decree. There does not appear any good reason for putting down a sort of fictitious date on the decree, namely the date of the judgment, for the date of the decree should be the date when it is signed by the Judge and not the date of the judgment. The form of the decree which is prevalent now contains two dates—one is the date on which the judgment was pronounced, and the second is the date on which the Judge actually signed the decree. It appears proper that the decree should contain only one date and that date should be the date on which it is signed by the Judge. Accordingly an amendment to rule 7, of Order XX has been proposed as at serial 13, Appendix B.

Date of the decree.

Order XXI, Rule 2, Civil Procedure Code

A judgment-debtor is often interested in delaying the execution and cases are common when false pleas of adjustment are raised. Decision of such objections by the executing courts and thereafter by the appellate courts takes a long time, which causes undue delay in execution and often also furnishes grounds for fresh litigation. As such it appears proper to provide that no adjustment which is not evidenced by a writing can be pleaded as such in answer to an execution. It may be noted that Order XXI, rule 1, has already been amended by the Allahabad High Court so as to prescribe the modes of payment out of court through a bank or by postal money order or evidenced by a document. On the same lines it is considered proper that only such adjustment should be recognized by the executing court as is evidenced by a document. Accordingly it is suggested that Order XXI, rule 2, may be amended as at serial 14, Appendix B.

Adjustment in writing only to be recognised by executing court.

Order XXI, Rule 2-A, Civil Procedure Code

It will appear that apart from rule 1 of Order XXI there is no specific provision for compromise in execution. The scope of rule 1 is a very limited one as it confines itself to payments and adjustments. A compromise which goes beyond these or which has the effect of modifying the decree in any respect cannot be recognised by an executing court even though parties enter into such a compromise voluntarily and for their mutual benefit. Provision should, therefore, be made for power to compromise during the pendency of an execution and such a compromise should be recognizable by the executing court. In money decrees often a decree-holder can be persuaded to grant instalments, but under the present law an executing court has no power to vary the decree by accepting payment by instalments; this often works great hardship on parties. However, the scope of such a compromise should not be too wide lest it should lead to other complications. It is, therefore, proposed to add a new rule 2-A, which may allow the parties to a decree to enter into a compromise in regard to the mode by which the relief granted by the decree can be obtained or as to the time when the decree is to become executable. Such compromises should, however, be in writing and should be recorded by the court even though these may have the effect of modifying the decree in a sense. The proposed rule 2-A is contained at serial 15, Appendix B.

Compromise in writing to be recorded by executing court even if it varies the terms of decree.

Order XXI, Rule 11(2), Civil Procedure Code

The Law Commission has proposed the deletion of clauses (*b*), (*c*), (*d*), (*f*) and (*h*) of this sub-rule. The Judicial Reforms Committee recommended the deletion of clauses (*b*), (*c*) and (*f*). The Committee carefully considered the recommendations of the Law Commission as also the recommendations of the Judicial Reforms Committee in regard to this. The Committee is of the opinion that clauses (*f*) and (*h*) of Order XXI, rule 11 (2), should not be taken out, but should be permitted to continue in this sub-rule. Clause (f) enjoins upon the decree holder to provide particulars in regard to all previous applications for execution of the decree with their dates and the fate of such applications. If these particulars are not furnished by the decree-holder in his execution application then unnecessary time is consumed by the execution department of the court in gathering these particulars from the various registers. Further, there is likelihood of some particulars escaping the attention of the court, which may lead to unnecessary prolongation of an execution matter or may even lead to injustice. The decree-holder is put to no additional burden for supplying the particulars required by clause (*f*) for the decree-holder must know precisely the previous applications that he made for execution and their respective fates. Similarly clause (*h*) of this sub-rule should also be retained for it is thought desirable that a decree-holder should separately mention in his execution application the amount of costs which have been awarded to him under the decree which is put in execution. Under sub-rule (3) of rule

11 the court to which an application for execution is made has the power to require the applicant to produce a certified copy of the decree. If the particulars which are required by sub-rule (2) are cut down severely then all such courts that are careful in the matter of executions—and all courts are expected to be careful in matters of execution—will often be driven to the necessity of calling upon the applicant to file a certified copy of the decree. The omission of the aforementioned clauses of sub-rule (2) will, it is feared, instead of leading to less trouble for the decree-holder, be a source of greater expense and trouble to him, for the Committee visualises that if the particulars furnished in the execution application are too genuine then the decree-holder will be called upon practically always by the court to file a certified copy of the decree. The Allahabad High Court has already made an amendment in clause (*f*) of sub-rule (2) by substituting the following:

Factual information required from the decree-holder under O. 21, rule 11 (2), C.P.C. is necessary.

"(*f*) the date of the last application, if any;"

and by adding the following proviso :

"Provided that when the applicant files with his application a certified copy of the decree the particulars specified in clauses (*b*), (*c*) and (*h*) need not be given in the application."

Thus the rigour of the rule, if any, has already been whittled down.

Order XXI, Rule 17, Civil Procedure Code

Rectification of defects in the application for execution of decree.

Rule 17 of this Order empowers the executing court to reject an execution application if it finds that the application is not in accordance with the requirements of rules 11 to 14 or it may allow the defects to be remedied then and there or within a time to be fixed by the Court. The Allahabad High Court has amended this rule, but in the opinion of the Committee the amendment does not fully carry out the intention with which the Committee suggests an amendment to the rule. The Committee, therefore, suggests that it be amended as proposed at serial 16 of Appendix B.

Order XXI, Rule 22, Civil Procedure Code

On the recommendations of the Judicial Reforms Committee an amendment was made in rule 22 of Order XXI. Under clause (*a*) of sub-rule (1) it was necessary to give notice to the judgment-debtor in case the execution application was made more than one year after the date of the decree. By an amendment the Allahabad High Court substituted this period of one year by three years. In the opinion of the Committee the period of three years which has been substituted by the Allahabad High Court for the period of one year in the original rule was appropriate. The Committee considers that notice should also be given to a judgment-debtor of an application for execution under rule 22 in all such cases where the

decree is an *ex-parte* decree, for in such cases by and large judgment-debtors have no notice of the suit and they come to know about the suit only when execution is taken and their property is attached or some sort of a prohibitory order is made against them. It is considered desirable, therefore, to make it obligatory to give notice to the judgment-debtor in that case also where the decree sought to be executed is an *ex parte* decree, no matter what time has elapsed between the passing of the decree and the initiation of execution proceedings. An amendment has been suggested at serial 17, Appendix B.

Notice to show cause against execution where decree is *ex parte*.

Order XXI, Rule 37, Civil Procedure Code

Whether notice to show cause against arrest and detention necessary in every case.

Rule 37 as it stood before the amendment in 1936 empowered the court to issue a warrant against a judgment-debtor without first issuing a notice of "show cause" to him. By the 1936 amendment, however, it became obligatory to issue notice although under the proviso the court could dispense with the notice under certain circumstances. The Judicial Reforms Committee was of the opinion that if execution by arrest was to serve any really useful purpose in helping the decree-holder to get his money then the issue of notice should not be the rule, but an exception. The Committee considered this aspect of the matter with care and it is of the view that the issue of notice to a judgment-debtor, prior to the issue of a warrant of arrest, really defeats execution rather than helps it. So the Committee agrees with the opinion held by the Judicial Reforms Committee and suggests an amendment of rule 37. The suggested amendment is to be found at serial 18, Appendix B.

Order XXI, Rule 66, Civil Procedure Code

Detailed proclamation of the intended sale not necessary in case of movable property.

Under the existing rule a detailed proclamation of the intended sale of all property whether movable or immovable has to be made. The Committee is of the opinion that such a detailed proclamation is unnecessary in cases where the property sought to be sold is movable. Similar view was expressed by the Judicial Reforms Committee earlier, which also suggested an amendment of this rule. The Committee finds itself in general agreement with the views expressed by the Judicial Reforms Committee and an amendment has accordingly been suggested as at serial 19, Appendix B.

Order XXVI, Rule 1, Civil Procedure Code

Time-limit for sale.

Rule 68 provides for a time-limit of 30 days and 15 days respectively for the sale of immovable and movable property calculated from the date of publication of the proclamation of sale under rule 66. The Law Commission has recommended the reduction of these limits to 15 days and 7 days respectively. The Committee finds itself in agreement with the views expressed by the Law Commission. The Allahabad High Court has already reduced the period of 15 days to 7 days. The question remains of reducing the period of 30 days to 15 days in the case of sale of immovable property. The Committee suggests such a reduction. An amendment has accordingly been suggested as at serial 20, Appendix B.

Order XXII, Rule 4, Civil Procedure Code

Court may call upon any party or any other person acquainted with the case to disclose the names of legal representatives of the defendant.

Often considerable delays and harassments are caused to parties in bringing upon the record the legal representatives of deceased parties. The obligation to bring the legal representatives on the record rests on the plaintiff or the appellant, as the case may be. If the representative is not brought on the record within limitation then the consequences that follow are drastic, for the suit or the appeal abates. An application for setting aside an abatement can of course be made, but an abatement can be set aside only on sufficient cause being shown. All this entails cost and is a time-consuming process. Plaintiffs often have difficulty in knowing the names of all the legal representatives and, therefore, often disputes arise or are deliberately raised for purposes of delaying a suit. This state of affairs needs to be discouraged. So that, if powers were given to a court to call upon any party to a cause or any other person acquainted with the facts of the matter to disclose the names of the legal representatives in case the court is of the opinion that such party or person is aware of the names of the legal representatives, a good deal of delay could be eliminated. A penalty by way of costs should also be provided for in case of failure on the part of a defendant when called upon to give the names and addresses of the legal representatives. An amendment has accordingly been suggested as at serial 21, Appendix B.

Penalty by way of costs for not disclosing.

Order XXIII, Rule 3, Civil Procedure Code

It is felt that many false claims in regard to there having been a compromise or agreement are asserted by losing parties with a view to raise unnecessary complications and to delay the proceedings. The Committee, therefore, is of the view that any such compromise or agreement should be required to be in writing. Difficulty also exists in respect of the interpretation of this rule. The word "lawful" used therein has been put to different interpretations by different courts and in some cases it has been given a very restricted meaning. Thus, for example, in the *Union of India* v. *Sahu Raghubir Saran,* (1956 A. L. J., page 281) it was held that the consensus of judicial opinion for the last 20 years had been that the word "lawful" did not include agreements which were voidable at the option of one of the praties thereto. The view of the Committee is that the word "lawful" in the rule was wide enough to include an investigation into the question whether or not the agreement sought to be recorded was voidable, but the Committee wants to obviate the difficulty that may be felt by the courts because of the long string of decisions to the contrary. An amendment has accordingly been suggested as at serial 22, Appendix B.

Compromise or agreement to be in writing.

Order XXVI Rule 1, Civil Procedure Code

This rule empowers the court to issue commissions for the examination of witnesses. It appears proper that before issuing a commission for the examination of a witness the court should satisfy that the evidence which the witness is expected

to give would be material to the suit. Often parties get a commission issued just to delay the suit. At other times such applications are moved after undue delay and at a late stage so that either the case has to be adjourned or a date for final hearing cannot be fixed at an early stage. For the disposal of civil suits with reasonable despatch it is necessary that applications for the issue of a commission for the examination of a witness should be made at a fairly early stage in the progress of the suit so that it may not cause any delay in the hearing and disposal of the suit. As such, it appears proper to add a proviso giving discretion to the court to refuse to issue a commission if the court was of the opinion that by doing so the hearing of the case was likely to be delayed. Accordingly the addition of two provisos to the rule has been suggested as at serial 23, Appendix B.

Commission to examine witnesses.

Order XXVI, Rule 9, Civil Procedure Code

Under this rule a court can issue a commission to make local investigation. It has been the experience that often times courts direct the issue of such commissions rather lightly, that is to say, without properly weighing the question as to whether or not such local investigation was necessary for the proper disposal of the suit: the result of issuing such commissions is that courts very often, when objection is raised to the report submitted by the Commissioner, find a kind of *via media* by issuing another commission for local investigation without deciding as to whether or not the report by the first commissioner should be rejected. This procedure was not only unjustified in law, but was beset with many serious and undesirable complications arising in the suit. The proper way for a court to act is to refuse to issue a second commission unless and until the report of the first commissioner had been rejected or it was found necessary to have further elucidation in respect of the investigation already made. With a view to make the position perfectly clear an amendment to rule 9, has been suggested which will be found at serial 24, Appendix B.

Commission to make local investigation.

Order XXXIX, Rule 2, Civil Procedure Code

The issue of an injunction is always a serious matter for it often vitally affects the rights of a party, often without there being a valid and proper adjudication, for injunctions are issued at a preliminary stage of a suit. Cases have not been rare when injunctions had been granted by courts rather lightly thereby causing serious prejudice to a party. That the right to have an *ex parte* injunction is a very valuable and necessary right cannot be doubted, but even so it is desirable in the interest of justice to place as many safeguards as possible to an abuse of this right by a party in certain types of litigation. The magnitude of harm that may be caused by an injunction lightly granted by a court becomes all the greater in a case where injunction is granted against Government or some public officer, for it always dislocates official business and often causes injury to the public interest: it has been the experience that quite a large number of applications for injunctions are

Injunctions

made on inaccurate allegations of fact or on suppression of such material facts as would alter the complexion of the matter. In the case of injunction sought against Government or against some public officer courts could very properly direct notice of the application to be given to the Government Pleader of the District and also provide the Government Pleader an opportunity to *prima facie* meet the application before making an interim order on the application. In cases where the giving of such notice was likely to defeat the object of the injunction a court could in the exercise of its judicial discretion dispense with such notice but the giving of notice should be the ordinary rule in a case where injunction is sought against either the Government or an officer of the Government. With the aforementioned object in view the Committee has suggested an amendment to Order XXXIX, rule 2.

The Allahabad High Court by an amendment made by it in September, 1941, deleted sub-rules (3) and (4) from rule 2 and substituted these with some verbal alterations by rule 2-A. We suggest that the present rule 2-A as amended by the Allahabad High Court should be placed back as sub-rules (3) and (4) in rule 2 of Order XXXIX, and the amendment suggested by us should be numbered as rule 2-A. The amendment suggested is to be found at serial 25, Appendix B.

Order XLI, Rule 1, Civil Procedure Code

Memorandum of Appeal should clearly specify the relief prayed for.

Though this rule requires that the Memorandum of Appeal should set forth the grounds of objection to the decree of the court below yet this rule does not require the appellant to set forth the relief that he claims from the appellate court, although under rule 35 of this Order it was necessary for the appellate court in its decree to clearly specify the relief granted or the adjudication made. The Law Commission considers it necessary that the Memorandum of Appeal should clearly specify the relief which the appellant seeks from the appellate court. This Committee is in respectful agreement with the view of the Law Commission on this question, and the Committee, therefore, suggests that this rule should be amended so as to make it obligatory for the appellant to state concisely and clearly the relief prayed for. The Committee has accordingly suggested an amendment to be found at serial 26, Appendix B.

CHAPTER IV

EXTENSION OF JURISDICTION OF SMALL CAUSE COURTS AND CHANGES SUGGESTED IN THE PROVINCIAL SMALL CAUSE COURTS ACT.

The Committee considered the question whether or not it was advisable to extend the ambit of small cause courts' jurisdiction in respect of certain classes of suits and with that end in view the Committee examined the different articles of Schedule II of the Provincial Small Cause Courts Act.

Article 8—This article relates to suits for recovery of rent and it reads as follows:

> "A suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the Government with authority to exercise jurisdiction with respect thereto;"

All rent suits to be cognizable by Small Cause Court if within pecuniary limits.

It means that suits for recovery of rent, other than house rent, have been excluded from the purview of a Small Cause Court unless the Judge of such a court has been expressly empowered by the State Government to exercise jurisdiction in respect of such suits. The Law Commission observed :

> "A suit for recovery of rent which presupposes a contract stipulating payment of rent is nothing more than a money claim and should, on general principles, be brought within the jurisdiction of the Small Cause Court".

They accordingly recommended the deletion of article 8. We are in respectful agreement with the opinion of the Law Commission on this point. We consider that by bringing in this amendment quite a large number of suits, which otherwise go to the court of the Munsifs where their disposal is delayed to an extent, will be expeditiously disposed of by Small Cause Courts and it will also mean less expenses to the parties concerned. We, therefore, suggest that article 8 should be deleted from Schedule II of Provincial Small Cause Courts Act.

Claims for recovery of fee, cess, Malkana etc. based on written agreement or decree to be cognizable by Small Cause Court.

Article 13—Under the existing article 13 all suits to enforce payment of the allowance or fees respectively called *malkana* and *hak* or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in the immovable property or in a hereditary office or in a shrine or other religious institution, are excluded from the cognizance of a Small Cause Court. These suits generally involve claims for recovery of money. Where such claims are founded on a written agreement or a decree of court they do not raise any complicated questions and can safely be entrusted to Small Cause Courts if they fall within their pecuniary jurisdiction. We accordingly

suggest that article 13 should be suitably amended so as to make an exception in respect of suits of the nature provided therein which are based on a written agreement or a decree of a court. The proposed amendment is indicated in Appendix C.

Claims for maintenance based on written agreement or decree to be cognizable by small Cause Courts.

Article 38—Under this article, as it stands at present, all suits relating to maintenance are excluded from the cognizance of Small Cause Court. For the reasons stated above we consider that those suits relating to maintenance which are based on a written agreement or where the right to recover maintenance has already been decided and declared by a court of competent jurisdiction, should be made cognizable by a Small Cause Court if the claim falls within its pecuniary jurisdiction. We accordingly propose an amendment in article 38 as indicated in Appendix C.

Section 17—This section reads as follows :

"17 (1)—The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of Judgment shall, at the time of presenting his application, either deposit in court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the court may, on a previous application made by him in this behalf, have directed.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 145 of the Code of Civil Procedure, 1908."

Security demanded from an applicant for setting aside on *ex parte* decree.

The proviso contemplates that an application for setting aside an *ex parte* decree passed by a court of small causes besides being required to be filed within limitation shall not be treated as a competent application until the applicant has either deposited the decretal amount in court or has furnished such security for the performance of the decree as the court may direct, and that such direction must be obtained by means of an application which has to be filed before the presenting of the application for setting aside the *ex parte* decree. The applicant is required to present his application for setting aside *ex parte* decree or for a review of judgment along with the security demanded before the expiration of the period of limitation prescribed for the application in question. It is not open to the court to extend the time within which the deposit is to be made or security furnished.

The Committee feels that this provision of law as embodied in the proviso to section 17 was too stringent and often caused great hardship and sometimes even led to a denial of justice. Sometimes a person who seeks to have an *ex parte* decree set

Court's discretion to extend time for giving security.

aside has got no money to deposit and is unable to furnish the required security within a short time so as to make his application for setting aside the *ex parte* decree within the period of limitation though he might be able to do so if some more time is allowed to him. The Committee is of the opinion that the court should have a discretion in the matter subject to the statutory condition that the application for setting aside an *ex parte* decree or for a review of the judgment shall not be considered unless the applicant at the time of making his application or within such time as the court may allow, either deposits in court the amount due under the decree or gives such security for the performance of the decree as the court may direct. In our opinion, the amendment which we are suggesting would not affect any right of the decree-holder or cause any harassment to him in realizing his money in the event of his succeeding again in the suit. With this end in view the Committee has suggested an amendment in the proviso to section 17 which is to be found in Appendix C.

Pecuniary limits of small cause courts under section 15.

The last suggestion that the Committee has to make in respect of the Courts of Small Causes is that there should be an augmentation in the pecuniary jurisdiction of such courts. Sub-section (2) of section 15 of Provincial Small Cause Courts Act provides that subject to the exceptions specified in the Second Schedule and to the provisions of any enactment for the time being in force all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a court of small causes. Sub-section (3) of this section further provides that subject as aforesaid, the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a court of small causes mentioned in the order.

Pecuniary jurisdiction may be augmented.

At present the pecuniary limit of the jurisdiction of the Munsifs exercising Small Cause Court powers has been fixed at Rs.250. In the case of the Civil Judges exercising small cause court powers this pecuniary limit has been fixed at Rs 500. The regular Courts of Small Causes exist only in some big towns and the pecuniary jurisdiction of such courts extends to Rs.1,000. These limits were fixed in the year 1887. With the change in the economic life of the country these pecuniary limits appear inadequate. At the present moment, we find that the village courts, namely Nyaya Panchayats, have been given power to decide money suits up to the value of Rs.500. There appears no sufficient reason why the Small Cause Court's powers of senior Munsifs should not be raised to Rs.500 and those of Civil Judges to Rs.1,000. The Committee, therefore, recommends that Munsifs exercising powers of small cause court should be invested with power to decide suits of small cause nature up to the value of Rs.500 and Civil Judges should be invested with power to decide suits of small cause nature up to the value of Rs.1,000.

CHAPTER V

CHANGES SUGGESTED IN THE CODE OF CRIMINAL PROCEDURE AND THE REASONS FOR THEM.

In a previous chapter we indicated the changes in the law of procedure in regard to civil cases which could, in our opinion, eliminate some of the delays, harassments and corruption that prevail in the subordinate civil courts. The position with regard to harassment and corruption in magisterial courts is, if anything, of a greater magnitude. Indeed it is mainly because of harassment and corruption prevailing in magisterial courts and in some revenue courts that one finds people talking so much these days about corruption in courts in general.

The largest amount of delay, harassment and corruption appears to centre round the release of prisoners on bail. Not only is there delay in this matter but the evidence which the Committee had before it, clearly indicates that it was well nigh impossible for any accused person to be out on bail without his having to incur illegal and unjustified expenditure. The Committee has considered this matter in full detail and devoted a separate chapter to it.

The delay in investigations by the Police as well as defective and faulty investigations also contribute largely to the delays with consequent harassment prevailing in magisterial courts. This aspect of the administration of criminal justice has been dealt with by the Committee in a subsequent chapter.

Inadequacy of magisterial strength is another factor which has been largely responsible for the delays. The pressure of work on the magistracy has very largely contributed to providing opportunities to the ministerial staff attached to these courts to indulge in corrupt practices including the taking of illegal gratification for performing or refraining from performing their just duties.

In this chapter the Committee will deal with the defects in the rules of procedure and indicate the changes as also the reasons for those changes, in the procedural law which would, to some extent, at any rate, improve the conditions prevailing in subordinate criminal courts.

We now take the sections of the Code of Criminal Procedure in their order to indicate in brief the reasons for which the Committee recommends the changes in the respective sections.

Section 13—This section empowers a State Government to place any Magistrate of the First or the Second Class in charge of a sub-division or to relieve a Magistrate of such charge. The wordings of this section indicate that there could be only one Sub-Divisional Magistrate for any particular sub-division. It has, however, been found that in many sub-divisions one Sub-Divisional Magistrate cannot cope with the work for additional

burden has been thrown on Sub-Divisional Magistrates of late because many provisions of law have conferred jurisdiction on Sub-Divisional Magistrates alone to do certain acts or to take a certain kind of action.

More than one Sub-Divisional Magistrate for a particular sub-division.

Additional Sub-Divisional Magistrates were appointed by Government to relieve Sub-Divisional Magistrates of the pressure of business, but courts have taken the view that such Additional Sub-Divisional Magistrates could not legally exercise the jurisdiction which was vested on a Sub-Divisional Magistrate. It appears necessary, therefore, that this section should be amended in such a way as to give power to the State Government to appoint more than one Magistrate to exercise the powers of a Sub-Divisional Magistrate in any particular sub-division. The Committee recommends an amendment of the section, because then Government would be able to appoint Additional Sub-Divisional Magistrates and such appointments will have the immediate effect of expeditiously disposing of the accumulated business in some of the courts of Sub-Divisional Magistrates. With this idea amendment at serial 1 of Appendix D, has been suggested.

Section 14—This section confers on the State Government a power to invest persons, with requisite qualifications mentioned therein, to hold the position of Special Magistrates. These Special Magistrates are generally referred to as "Honorary Magistrates", as these Special Magistrates do not receive any emoluments. The evidence which the Committee had clearly showed that the "institution" of Honorary Magistrates never inspired the confidence of the people, nor did this class of Magistrates, by and large, perform their functions with much credit.

Institution of Honorary Magistrates.

The institution of Honorary Magistrates or Special Magistrates could, in the opinion of the Committee, be a useful one, for such magistrates, if a proper selection could be made, could very adequately relieve the regular criminal courts of quite an appreciable volume of work and thereby reduce the pressure on the regular courts. The Committee has made its recommendations with regard to the selection, training, supervision, guidance and control of Honorary Magistrates in a subsequent chapter.

Sections 22 *and* 25—These sections deal with the appointment of "Justices of the Peace". Section 22 empowers the State Government to appoint, by notification in the official *Gazette,* such persons as it thinks fit to be the Justices of the Peace within and for the local area mentioned in such notification. Section 25 says that by virtue of their respective offices the Judges of the High Court were to be Justices of the Peace within and for the whole of India, while Sessions Judges and District Magistrates were to be the Justices of the Peace within and for the whole of the territories administered by the State Government under which they were serving, and Presidency Magistrates were to be the Justices of the Peace within and for the towns of which they were respectively such Magistrates. The Code, however, does not prescribe the powers and functions of such Justices of the Peace. In the opinion of the Committee it is desirable that the powers and functions of "Justices of the Peace" may be

Justices of the Peace.

clearly specified in the Code.

Section 30—Under section 30 the State Government could invest any District Magistrate or a Magistrate of the First Class with the power to try, as a Magistrate, all offences not punishable with death or imprisonment for life or imprisonment exceeding seven years. This investment of power the State Government could do in consultation with the High Court. There was a proviso to this section which said that no Magistrate who had not acted as a First Class Magistrate for at least ten years could have such powers conferred on him.

There could be no doubt that some Magistrates who had exercised powers of a First Class Magistrate for more than ten years could be entrusted with the additional powers mentioned in section 30, but there were some difficulties in conferring such powers on Magistrates, the main difficulty was that trial by Magistrates, of cases in which heavy sentences of imprisonment could be awarded was not likely to inspire the confidence of the litigant public, particularly when this additional power could be confered by the State Government not with the "concurrence" of the High Court, but only in "consultation" with the High Court. In the view of the Committee the public would have greater confidence in the Magistrates with enlarged jurisdiction, so to speak, if their appointments were made with the concurrence of the High Court and not merely in consultation with the High Court.

Powers under s. 30 Cr. P. C. may be conferred with the concurrence of the High Court.

With a view to maintain public confidence in the trial of cases involving serious offences by Magistrates empowered under section 30, the words "in consultation with the High Court" should be substituted by the words "with the concurrence of the High Court" in paragraph 1 of section 30. After the suggested amendment has been given effect to, use could be made of this power to relieve the burden of Assistant Sessions Judges when separation was fully effected. An amendment has accordingly been suggested in section 30 as specified in Appendix D at serial 2.

Section 32—This section prescribes the sentences which various grades of Magistrates are competent to award. A suggestion was made to the Committee that Magistrates of the Flrst Class should be invested with power to impose sentences of imprisonment up to four years instead of only two years as provided for in this section and further that these Magistrates should be invested with power to impose sentences of fine up to Rs.5,000.

The Committee considered this question carefully and it came to the conclusion that Magistrates who have exercised first class magisterial powers for more than five years could be invested with the power to impose sentences of imprisonment upto four years. The Committee, however, was of the opinion that their power to impose fine should remain unchanged and there should be no enhancement in this power.

Enhanced powers for 1st class Magistrates of five years' standing.

By investing the class of Magistrates, referred to above, with the larger power of awarding sentences of imprisonment the result would be that Magistrates would not necessarily be committing cases to the court of Session when they would be of the opinion that a larger sentence than was awardable by a Magis-

trate was called for. This would lead to quicker despatch of criminal cases and would also have the effect of reducing the workload on Assistant Sessions Judges; it will further have the effect of reducing the cost.

Condition on which this enhanced power is recommended.

It may, however, be emphasised that the Committee has recommended the conferment of enhanced powers on Magistrates under section 30 and 32 on the understanding that there would be complete separation of judiciary from the executive and the Magistrates would be placed under the complete administrative control of the High Court for without that the conferring of enhanced powers on Magistrates would not inspire public confidence.

Section 35—It has been found that most Magistrates and Judges do not exercise any proper discretion in the matter of making sentences run concurrently in respect of the several offences for which an accused person is convicted by them. They, more or less, as a matter of course, make the sentences run concurrently. It appeared that this should not be so, for the intention of the framers of the Code clearly was that a person should be awarded a sentence for each offence that he commits and that if the court trying the accused thought that there were good reasons for making the sentences run concurrently then only should such an order be made. There appeared no good reason why an offender should not suffer more punishment for committing more than one offence than one who committed a single offence. The question of punishment was an important question and a court awarding a sentence should carefully consider the question of the quantum of punishment which was to be awarded to the accused under the circumstances of each case; courts should not resort to, what may be called, a rule of thumb.

Sentences to run concurrently only for good reasons to be recorded.

In view of what has been said above the Committee has suggested an amendment to section 35 as specified in Appendix D at serial 3, with a view to make it clear that sentences should normally run consecutively and that they could be made to run concurrently only for good reasons to be stated by the court in its judgment.

Section 91—This section confers power on a court to take a bond from a person for his appearance in court. Under this section a court can only take a bond from a person to appear in the court which took the bond; there appeared to be no power under this section to take a bond from a person for appearing, if necessary, in any other court to which the case may subsequently be transferred. The Committee was of the view that this section should be amended in order to give power to a court to require execution of a bond in such terms as could make it obligatory for the person to either appear in the court which took the bond, or in any other court which may be notified to him subsequently. This change would eliminate some amount of harassment to the accused for he will not be required any more to appear before a court which took the bond from him just to be informed that he has to appear before another

Bonds may be executed so as to require the person to appear in any court to be notified to him.

court which may again require him to execute another bond. The form of the bond will also require consequential amendment. Amendments have accordingly been suggested to section 91 as specified in Appendix D at serial 4.

Section 103—This section required amendment because in practice strict compliance with the terms of the section was neither made nor was it possible in many cases. Under this section a person about to make a search was required to call upon two or more respectable *inhabitants of the locality* in which the place to be searched was situated, to attend and witness the search. This provision was undoubtedly a salutary one, but there were considerable practical difficulties felt in complying with the provision for, by and large, neighbours refrained from being search witnesses.

Search witnesses need not necesarily belong to the same locality.

The guarantee of a fair search, in the opinion of the Committee, did not lie in fact that the search witnesses happened to be persons of the locality, but in the fact that they were respectable persons on whose testimony the court could rely. If the court could be satisfied as to the reliability of a search witness then there appeared to the Committee no adequate reason why his evidence could not be acceptable merely on the ground that the witness did not happen to belong to the locality in which the place to be searched was situated.

A good deal of time of the court was often wasted because of the cross-examination of search witnesses for the purpose of bringing out the fact that they were not persons of the locality, and further a good deal of time-consuming argument was raised on the question as to whether or not reliance could be placed because of the aformentioned circumstance on the search, by the court. Though it is now settled that the non-appearance of a search witness of the locality did not vitiate the search, yet some courts did hold such searches to be bad and there was, therefore, sometimes an unjustified acquittal also. The Committee has accordingly suggested amendment to section 103 as specified in Appendix D at serial 5.

Sections 106, 108 *and* 110—Section 108 of the Criminal Procedure Code confers power, so far as this State is concerned, on a District Magistrate or a Magistrate of the First Class to take security for good behaviour from persons dissiminating seditious matter. Magistrates of the First Class, specially empowered by the State Government, alone are competent to take action under this section and not any Magistrate of the First Class. The intention of the Legislature, therefore, appeared to be that the State Government should only empower particular Magistrates of the First Class for taking action under this section. A whole class of Magistrates, as such, or a body of Magistrates as such, could not be empowered under this section by the State Government to take action under this section.

The notifications which the State Government have issued under this section appear to empower a whole body of Magistrates. This does not appear to be legal and action taken by such "empowered" Magistrates, strictly speaking, would be without jurisdiction. The position in the opinion of the Com-

Notifications conferring powers on first class Magistrates under sections 108 and 110 Cr. P. C. should be issued individually.

mittee, should be legalized. There appear to be only two alternative courses open: either to amend this section in such a manner as to make it possible for the State Government to empower a whole class of Magistrates to take action under this section or issue fresh notifications empowering First Class Magistrates individually to take action under this section. The Committee, after a careful consideration of the two alternatives has reached the conclusion that it would be better to adopt the latter course and to issue appropriate notifications under this section 419 rather than to amend this section.

The same position obtains in regard to the "empowering" provided for under section 110.

Maximum period for binding down persons for good behaviour to be reduced.

The Committee has one other suggestion to make and that relates to the period provided for binding down persons for being of good behaviour. Each of the sections 106 and 110 prescribes a period of three years. This period was, in the opinion of the Committee, too long and often caused unnecessary harassment to citizens who may have had the misfortune of having incurred the displeasure of the police. In the view of the Committee a period of two years was long enough to give a man a chance to change his way of life, and if a man did not change his ways after being bound down for two years then another year was unlikely to have much effect on him and such a person required some other kind of treatment for making him a better citizen. The Committee, therefore, suggests that the period of three years should be reduced to two years. With that end in view amendments have been suggested to sections 106 and 110 as specified in Appendix D at serial nos. 6 and 7.

Sections 112-*A and* 117 (1-*A*).—Section 55 authorizes the arrest of a person liable to be proceeded against under Chapter VIII, i.e. under any of the sections from 107 to 110. As required by section 61 a person arrested under section 55 has to be produced before a Magistrate within 24 hours of his arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

Remand to custody of persons arrested under section 55 Cr. P. C.

Section 167, under which power is given to the Magistrate to remand an accused to custody, does not appear to be applicable to the case of a person arrested for being proceeded against under Chapter VIII. Likewise, section 344 which empowers the court to direct an accused person to be detained in custody during the pendency of an enquiry or a trial does not appear to apply to the case of a person proceeded against under Chapter VIII. It will thus be seen that there is no specific provision in the Code of Criminal Procedure, except what is found in section 117 (3), for the detention in custody of a person arrested under section 55. Action under section 117 (3) cannot be taken till an order under section 112 has been made and there are many cases in which it is not possible to make an order under section 112 within the period of 24 hours, the time allowed to the police to keep an accused in detention.

The fact that neither section 167 nor section 344 applies to the case of a person arrested under section 55 has been pointedly brought out in the case of *Shrawan Kumar* v. *Superintendent, District Jail, Mathura,* reported in 1957 A. W. R. 14. It seems necessary, therefore, to provide for similar powers in respect of persons arrested under section 55 as are exercisable under sections 167 and 344 by Magistrates in respect of persons arrested in connection with "an accusation for an offence". With that end in view, the Committee has suggested the insertion of a new section after section 112, namely section 112-A and a new sub-section after sub-section (1) of section 117 as sub-section 117 (1-A) in the words specified in Appendix D at serial nos. 8 and 9.

Sections 112-A and 117-(1-A) Cr. P. C.

Section 123—The Committee feels that the safeguard provided in sub-sections (2), (3), (3-A) and (3-B) of section 123 appeared unnecessary particularly, when the hands of Sessions Judges were too full and when specially empowered Magistrates could safely be entrusted with the task of deciding whether or not any person should be called upon to give security for a period exceeding one year. The Committee has also earlier recomended that the period of three years stated in sections 106 and 110 be reduced to two years. Accordingly, it has been suggested that the above-mentioned sub-sections of section 123 may be deleted and the remaining sub-sections may be re-numbered and as a consequence thereof the words "except in the case next hereinafter mentioned" occurring in sub-section (1) may be deleted. The necessary amendments to this section 123 are indicated in Appendix D at serial 10.

Reference to Sessions Judge under Sec. 123 Cr. P. C. unnecessary.

Sec. 123 Cr. P. C. to be amended.

Sections 133, 134, 135, 136, 138 and 139—The group of sections dealing with public nuisances in Chapter X of the Code contain some very salutary provisions. The sections have been couched in simple language and much of the procedure envisaged therein is not complicated. Nevertheless, some of these sections have been so thoroughly misunderstood and misapplied by Magistrates that parties had to move the High Court for redress which wasted a good deal of the High Court's time and entailed parties into unnecesary costs. The sequence in which the sections in this Chapter appear is also not very logical and needs re-arrangement.

Sections 133 to 136, 138 and 139 need amendment and rearrangement.

The provision relating to the appointment of a jury appears to be unnecessary. Experience over years has shown that very rarely did a party ask for the appointment of a jury; further, whenever a party did ask for the appointment of a jury the request was not made in order to have a proper decision of the cause but was made mainly for the purpose of delaying the proceedigs.

Trial by juries having been abolished in the State, it appears that the retention of a jury under this Chapter was not justified. The Committee, therefore, recommends the deletion of that provision which entitled a party to ask for the appointment of a jury.

Provision for appointment of a jury should be deleted from these sections.

Appropriate amendments in sections 133 ,134, 135 and 136 are indicated in Appendix D at serial nos. 11 to 14.

The Committee recommends the complete deletion of sections 138 and 139.

Sections 136-A and 139-A—The Committee is of the view that the provision contained in section 139-A is not at its appropriate place. This provision should come immediately after section 136.

According to the Committee a new section containing the same provision as is contained in section 139-A should be added after section 136 and this should be numbered as 136-A and that section 139-A should be deleted as indicated in Appendix D at serial 15.

The Committee has further found that there is a lacuna in Chapter X in so far as there is no provision in this chapter which empowered a Magistrate to direct a local enquiry or to direct the production of an expert who could assist the Magistrate in coming to his conclusion in regard to any particular matter in issue. It sometimes becomes necessary for the proper decision of a case to make either a local investigation or to have the evidence of an expert.

Local investigation and expert evidence.

The Committee, therefore, suggests that a new section 137-A be added to this Chapter conferring necessary powers on a Magistrate conducting an enquiry under this Chapter to make a local investigation and to have expert evidence. The appropriate amendment is set out in Appendix D at serial 16.

Section 144—A view has been expressed that some of the provisions of section 144 are unconstitutional in so far as the restrictions imposed thereunder do not fall within the category of "reasonable restrictions" which are imposable under Article 19 (2) of the Constitution. Such a view was expressed in the case of *Raj Narain Singh* v *The District Magistrate of Gorakhpur*, (A. I. R. 1956, All. 481).

(This section, in view of what has been stated in *Raj Narain Singh's* case mentioned above, requires re-drafting).

Sub-section (3) of section 144 also requires re-drafting, for this sub-section contemplated making of an order directing a particular individual or the public generally when frequenting or visiting a particular place to do or refrain from doing certain stated acts. The use of the word "place" in this sub-section has given rise to some difficulty in regard to the meaning that was to be attached to the word "place". The difficulty experienced was whether the word "place" could be interpreted to mean any particular "area". From the practical utility point of view it was thought desirable to put in the word "area" after the word "place" in this sub-section, for it often was found necessary, and indeed possible only, to make an order in relation to an area and not in relation to any particular place. The section was one of the preventive sections and it was thought desirable, therefore, to make the provision such as could appropriately be utilised for the purposes for which the provision was intended.

The sub-section as it will now read after the inclusion of the word "area" after the word "place" is to be found in Appendix D at serial 20.

Provisions of Sec. 145 Cr. P. C. to be used with care so as to avoid harassment.

Section 145—The use of this section has been the cause of considerable harassment to citizens, for Magistrates have used this section very lightly with the result that in many cases persons having undisputed title to property have been driven to the necessity of embarking on costly and dilatory litigation both in the criminal as also in the civil courts.

There was nothing in the language of the section, however, which needed change for no change in the language of the section could ensure that Magistrates would take care to act under the provisions of the section only in cases where they were actually and properly satisfied that a dispute in regard to property was likely to cause a breach of the peace. Police as also unscrupulous parties have taken recourse to this section to harass their enemies and Magistrates have due to want of proper care, often unwittingly, helped such parties by lightly making orders under the provisions of this section.

It is in the opinion of the Committee essential that it should be impressed on all Magistrates that action should not be taken lightly under the provisions of section 145, Cr. P. C.

Action under this section can be taken by a District Magistrate, a Sub-Divisional Magistrate or any Magistrate of the First Class and it has been the experience that action taken under this section by inexperienced Magistrates is often not appropria tely taken. A proper use of this section, i.e. when action should be taken under the provisions of this section, required maturity of judgment which came largely with experience.

Mr. Justice Desai, who has had much experience of criminal work both as a District Judge and a Judge of the High Court, has expressed the opinion that jurisdiction to take action under section 145, Cr. P. C. should only be conferred on District Magistrates and Sub-Divisional Magistrates especially empowered. The views of Mr. Justice Desai are undoubtedly entitled to great weight but for reasons indicated later it was not possible or practicable to confer the power to take action under section 145 on District Magistrates alone or only on Magistrates especially empowered. The Committee, however, held the opinion that if this could be practicable then it would have been a very desirable state of affairs, but on a careful examination of the etire situation the Committee found that it was not possible to divest Sub-Divisional Magistrates of the power to take action under this section, principally because in the scheme of the Code of Criminal Procedure, the responsibility for law and order of a Sub-Division primarily rested on Sub-Divisional Magistrates. If the Sub-Divisional Magistrates were denied the right to take action under this section then in many cases the object with which section 145 was enacted would be completely defeated.

II Class Magistrates even if holding charge of subdivision should not be allowed to take proceedings under section 145 Cr. P. C.

The Committee was of the view that, to a very large extent, improvement would take place in the quality of the orders made under section 145 if action under this section could be taken only by Sub-Divisional Magistrates who were Magistrates of the First Class. Under the Code of Criminal Procedure a Magistrate of the Second Class also could be a Sub-Divisional Magistrate and the Committee is informed that there are some Sub-Divisional Magistrates who have only Second Class powers. The other method by which possibly some improvement could be brought about was to have a general direction issued by the State Government to all District Magistrates to impress upon their respective Sub-Divisional Magistrates to bestow particular care and attention when taking action under this section. The District Magistrates should impress upon all Magistrates that section 145 was not meant to be used lightly and that action under this section was to be taken only when a Magistrate was genuinely satisfied that there was a danger of the breach of the peace.

In these proceedings evidence to be recorded and not only affidavits to be put in.

In the opinion of the Committee a Magistrate could only be properly satisfied in regard to possession when he had evidence of witnesses before him: evidence which had been tested by cross-examination. Evidence given on affidavits could not supplant evidence given on oath by witnesses which had been tested by cross-examination. Under the amended section it was possible to give evidence by putting in affidavit. The Committee is of the opinion that the words "or to adduce by putting in affidavits" should be deleted from sub-section (1).

In view of what has been said above the Committee suggests that section 145 (1) should read thus :

> "Whenever a District Magistrate or a Sub-Divisional Magistrate with First Class powers or any Magistrate of the First Class specially empowered is satisfied from a police report . . . . . requiring them to put in such documents, or to adduce the evidence of such persons as they rely upon in support of such claims."

Release of attached property and restoration of possession if proceedings are stayed or quashed.

Sub-section (5) of section 145 also needs a slight amendment. Sub-section (5) says that when the Magistrate is satisfied that no such dispute as necessitated the continuance of an order under section 145 exists or has existed then the Magistrate was to cancel his order and upon the cancellation of his order "all further proceedings thereon shall be stayed". In the opinion of the Committee the use of the word "stayed" did not appear to be particularly appropriate. Staying of proceedings conveyed the idea of letting matters lie at a stage to which they had reached; further, there being no mention in the section as to what was to happen to the attachment which had been made under sub-section (4) upon the cancellation of the order made under sub-section (1), it appeared to the Committee that a clarification of the situation was necessary particularly as experience had shown that often parties were harassed because of there being no clear order withdrawing the attachment of the property. The Committee has, therefore, come to the conclusion that sub-section (5) should be amended so as to clarify the posi-

tion by empowering the Magistrate dealing with the case to restore possession to the party who may have been dispossessed because of the attachment, if any, made under sub-section (4) whenever an order passed under sub-section (1) had been cancelled under sub-section (5). The necessary amendment is specified in Appendix D at serial no. 21.

It has been pointed out that the second proviso to sub-section (4) of section 145 often caused injustice to parties, in so far as, the Magistrate could not treat the party dispossessed as being in possession at the date on which he makes his order because the period of two months from the date of dispossession to the date of the order had already expired. This situation often is brought about because of no fault of a party, for delays may be caused in obtaining police reports and in obtaining such other information on which the Magistrate could feel satisfied or where the High Court or the District Judge sets aside the preliminary order and sends the case back to the Magistrate for fresh trial: in all such cases the period of two months from the date of dispossession to the date of the order expires and the Magistrate cannot under this proviso, as it stands now, make an order directing the party forcibly and wrongfully dispossessed to be put back in possession. The Committee, therefore, suggests that the period of time during which a Magistrate was to have jurisdiction to put a party back into possession, who has been forcibly and wrongfully dispossessed, should commence from the date when the Magistrate gets information of the wrongful dispossession and not from the date of the order under sub-section (1).

Restoration of possession if dispossession had taken place within 3 months from the date of information.

A suggestion has been made that another proviso should be added so as to give power to a Magistrate in case he wishes to exercise that power to take property which is the subject-matter of dispute under his management by appointing a Receiver. This suggestion appears to be useful for very often disputes in regard to property during the course of its pendency in court cause waste in so far as the property, particularly when it is agricultural land, remains uncultivated. If there was power in the Magistrate to take such property under cultivation or direct its cultivation through a Receiver, then this waste could be avoided. The Committee, however, is of the opinion that in case the Magistrate was conferred the power to take the property under his management through the appointment of a Receiver or such similar person he could do so only if the Receiver gave adequate security so as to ensure that profits which accrued during the time the property was under the management of the Receiver found its way to the court and thereafter to the person lawfully entitled to it. The Committee, therefore, suggests that a further proviso be added as shown in Appendix D at serial no. 21.

Appointment of Receiver pending the proceedings.

It has been suggested that sub-section (6) of section 145 should be amended so as to confer power on the Magistrate to punish a party who disobeys an order made thereunder for a view was expressed in *State* v. *Srimati Tugla*, (A. I. R. 1955 All. 423) that a disobedience of an order made under sub-section (6) was not punishable under section 188 of the Indian Penal

Disobedience to an order under section 145 Cr. P. C. to be punishable under section 188 I. P. C.

Code. If the order of a Magistrate is to have real effect then the Magistrate should have power to punish a person for its breach. The Committee, therefore, suggests that sub-section (6) should be amended as indicated in Appendix D at serial 21.

Section 146—Experience has shown that the change that was introduced in section 146 by the Amending Act XXVI of 1955 was wholly incommensurate with the time and expenditure incurred by parties in pursuing the matter in the civil court, particularly when, as provided by sub-section (1-E) of the existing section 146, a decision arrived at by the civil court in such proceedings was not to be final but was further subject to a subsequent decision of a civil court of competent jurisdiction. No justification could be found as to why the summary decision of the question of possession was to be made by the Munsif on a reference to him by the Magistrate and why a Magistrate could not come to such a decision himself. The amendment which was brought about in 1955 in section 146 has led to a considerable waste of time of the civil courts without conferring any adequate advantages. The Committee was, therefore, of the opinion that the position as obtained before the amendment of 1955 should be restored. The appropriate amendment has been specified in Appendix D at serial 22.

Reference to civil court unnecessary. Old provision in section 146 to be restored.

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Section 167—This section provided for a kind of guarantee to an accused person that he would not be detained by the police beyond a period of 24 hours as mentioned in section 61 of the Code and as also provided for in Article 22 of the Constitution except on an order made by a Magistrate.

Section 167 requires that an accused person shall be "forwarded" to the Magistrate along with a copy of the entries in the diary, etc. In general practice the police do not produce the accused person before the Magistrate; further, they do not produce before the Magistrate all the material that the police have in their possession on which they consider that the accusation against the accused was well founded. A good deal of harassment and hardship is caused to accused persons because they are not actually produced before a Magistrate nor are all the necessary materials produced before the Magistrate and remand orders are obtained more or less as a matter of routine. This practice cannot be too strongly condemned. The Committee is of the opinion that it is necessary in the interest of justice that an accused person should be physically produced before the Magistrate at the time when the police apply for remand and the grounds on which they ask for remand should also be put up before the Magistrate in the presence of the accused so that if the accused wanted to controvert those grounds he could do so ; further, if the accused, so wanted, he could apply to the Magistrate to release him on bail and a Magistrate could whereupon have adequate opportunity of judicially determining, of course, on the material before him, as to whether or not the accused should be remanded into custody or should be released on bail. The use of the word "forward" has given the police

Production of the accused before the Magistrate at the time of remand.

opportunity of not actually and bodily producing the accused before the Magistrate. The Committee is of the opinion that the requirement of this section was the actual production of the accused. The appropriate amendment to sub-sections (1) and (2) of section 167 have been specified in Appendix D at serial 23.

Filing of fresh complaint after dismissal of a previous complaint.

Section 190—Under the existing provisions of the Code of Criminal Procedure it is possible to file a fresh complaint for the same offence for which an earlier complaint had been dismissed under section 203 or section 253 with the result that it is not unoften that a fresh complaint is filed only for the purpose of harassing an accused. This is a clear abuse of the process of the court. Several suggestions came up for consideration before the Committee with a view to put an end to such a state of affairs. The provisions for the dismissal of the complaint under different circumstances are contained in sections 203, 204 (3), 253 and 259 of the Code of Criminal Procedure.

Section 203 provides for the dismissal of a complaint in a case where a Magistrate after considering the statement on oath, if any, of the complainant and his witnesses and the result of any investigation or inquiry which may have been made under section 202, finds that there is no sufficient ground for proceeding in the case.

Sub-section (3) of section 204 provided for the dismissal of a complaint on the complainant's default to file the necessary process fee for the issue of process to the accused persons within a reasonable time in such cases, of course, where under the law the complainant is required to file process fee for service on the accused.

Section 247 *and section* 259—One for summons cases and the other for warrant cases—provide for the dismissal of a complaint on account of the non-appearance of the complainant at any time before the charge is framed.

Section 253 provides for the discharge of an accused person in a warrant case where, upon taking all the evidence referred to in section 252 and making an examination of an accused person, as the Magistrate thought necessary, he found that no case against the accused had been made out which, if unrebutted, would warrant his conviction.

From the above it would seem that whereas dismissals envisaged by sections 204 (3), 247 and 259 come into existence on account of accidents of circumstances while those envisaged by sections 203 and 253 were not dependent upon such accidents for the latter dismissals were the results of judicial consideration of the evidence led in support of the accusation against the accused persons. The Committee was of the opinion that those dismissals which were made on judicial considerations stood on a different footing from those which were brought about on account of accidents, that is to say, those that were made under either sections 204 (3), 247 or 259. The question, however, was whether a fresh complaint subsequent to the dismissal of the complaint under section 203 or 253 should on the same facts be completely barred or should there be a suitable amendment in

section 403 or section 190 whereby the Magistrate could be empowered to refuse to take cognizance of a subsequent complaint, if he felt satisfied that the subsequent complaint had been made with a view to harass the accused and as such its filing amounted to an abuse of the process of the court.

In our interim report we deferred taking a final decision on this question because the question was of great importance, and we wanted to take a decision after we had examined witnesses and also scrutinised other material relevant to the enquiry.

After giving this matter further thought in the light of the opinions which we collected and the discussions which the Committee had, we came to the conclusion that no amendment in the law on this question was called for at this stage. The main reasons which have impelled us to make this recommendation is that our scrutiny indicated that there were very very few cases in which a fresh complaint was filed after the dismissal of a complaint under section 203 or 253 of the Code of Criminal Procedure: what the complainants in such cases did was to go up in revision, a right which could not possibly be taken away. To bar a fresh complaint in all cases by an amendment of the statute was likely to cause grave injustice in genuine cases where the dismissal of the complaint was, speaking generally, due to no real fault of the complainant. In our opinion the dangers which are likely to arise if an amendment was made which would bar a fresh complaint would be more than any harassments or inconveniences that are likely to be suffered by accused on the filing of a second complaint.

In this connection it is important to bear in mind that in a large majority of cases a complaint is dismissed under section 203 before the accused makes his appearance—in such cases when a second complaint is filed it cannot be said that there was any harassment to the accused. The question of harassment only arose when a complaint was dismissed under the provisions of section 253 and in the case of such dismissal if a second complaint was filed and notice issued to the accused then the accused had, under the law, the opportunity to draw the attention of the Magistrate to the earlier dismissal and the reasons which brought about that dismissal and to ask the Magistrate to decide almost as a preliminary issue whether the complaint was to be proceeded with, and if the accused was able to satisfy the Magistrate that the second compliant was a frivolous one then the accused could, under the law, be compensated by an order in regard to costs which could be made under section 250 of the Code of Criminal Procedure.

Commitment of cases intiated on a police report.

Section 207-A—This section was incorporated into the Code of Criminal Procedure in 1955 by Act XXVI of 1955. By this section a radical change in the procedure, in respect of commitments, in cases initiated on a police report, was made. Since the introduction of this new procedure there has been a lot of criticism in respect of it; by and large, the change has not been found as satisfactory as was visualized by its sponsors.

This amendment attracted the attention of the Law Commission as well. They, however, refrained from expressing any

final opinion in regard to this matter because they were of the opinion that sufficient time had not elapsed, during which time this new procedure had been worked, to enable the Commission to pronounce any definite opinion in regard to its working. The Committee has had the same kind of feeling as the Law Commission had about the new procedure introduced by the 1955 Act. Even so, the Committee was of the opinion that certain changes were necessary in this section in the interest both of the prosecution and the accused.

In the opinion of the Committee sub-section (4) and sub-section (6) required amendment; further, it was necessary to add another sub-section after sub-section (5) and to number it as sub-section (5-A).

Sub-section (4) in a sense empowers the prosecution to produce such evidence as they chose, although it confers power on the Magistrate, in the interest of justice, to take the evidence of any one or more of other witnesses for the prosecution. In the opinion of the Committee it was desirable and necessary that the evidence of all the eye-witnesses should be recorded before the Magistrate; further that evidence should be recorded of such witnesses also, in a case where the charge against the accused depended on circumstantial evidence, by which the prosecution attempted to establish the main links in the chain of circumstantial evidence. The accused should also be afforded opportunity, in the view of the Committee, to produce his defence at this stage if he choses to do so. Experience has shown that the prosecution omitted to produce before the Magistrate eye-witnesses and other important witnesses and thus deprived the accused of that valuable right of contradicting the prosecution evidence when it was produced in the Court of Session by prosecution evidence recorded during enquiry proceedings. This worked as a hardship on the accused in many cases.

Evidence of all eye-witnesses and other important witnessesses to be recorded during inquiry.

There were cases in which witnesses were won over by the accused just before their production in the Court of Session and in such cases the prosecution were deprived of the advantage of tendering any evidence of theirs recorded earlier under the provisions of section 288, Criminal Procedure Code. In order to obviate the injustices envisaged above the Committee has suggested an amendment to sub-section (4) and the relevant amendment is to be found in Appendix D at serial 24.

As we have said above, the accused in our opinion should have an opportunity of giving defence in case he desired to do so, unless the Magistrate for reasons to be recorded, was of the opinion that such opportunity need not be given to the accused. The new sub-section (5-A) is to be found at Appendix D at serial 24.

Accused to have opportunity to produce defence.

Sub-section (6) also needed change. Under the present sub-section the Magistrate is bound to commit the accused to the Court of session "unless he was of opinion that such evidence and documents disclosed no grounds for committing the accused person to trial". These words hardly give any discretion to the Magistrate, holding the enquiry, to come to the

Discharge of the accused if no sufficient ground for commitment.

conclusion that there were no grounds for committing the accused to trial. The Committee accordingly suggests the addition of the word "sufficient" in between the words "such evidence and documents disclosed no" and the words "grounds for committing the accused person to trial". The relevant change suggested in section 207-A is to be found in Appendix D at serial 24.

Section 251-A to be amended.

Section 251-A—The Committee recognizes that the provision contained in sub-section (7) of section 251-A is wide enough to entitle the prosecution to ask the Magistrate to summon the witnesses required by the prosecution to be produced in support of its version, yet in an attempt to put the matter above discussion, the Committee has suggested the addition of the words specified in Appendix D at the end of sub-section (6) at serial 25.

Record in cases tried summarily under Chapter XXII.

Sections 263 and 264—These sections provide for the maintenance of Record in cases tried summarily under Chapter XXII. Section 263 relates to cases where a non-appealable sentence is to be passed while section 264 relates to cases where an appealable sentence is to be passed. The distinction between these two class of cases, so far as the maintenance of the record is concerned, is that in appealable cases a court is required to record the substance of the evidence and also record a judgment while in non-appealable cases recording of the substance of the evidence and recording a judgment are not necessary and only particulars mentioned in section 263 are required to be entered in a prescribed form. These particulars have to be entered in appealable cases also. The Committee feels that it is not possible for a Magistrate or Bench of Magistrates to judge at a preliminary stage of a trial whether or not an appealable sentence was to be awarded in case of the offence being proved. In the view of the Committee it would be desirable to record the substance of evidence in every case tried summarily under Chapter XXII.

We have, therefore, suggested a common procedure for the maintenance of record in all such cases by suitably amending section 263 and we propose the deletion of section 264. The only distinction that we still propose to retain in this respect in these two class of cases is that in case an appealable sentence is passed it shall be necessary for a Magistrate or Bench of Magistrates to record a judgment in the case.

The amendments proposed by the Committee are indicated in Appendix D at serial 26.

Petty offences.

Suggested procedure for petty cases—The Committee has felt that in cases involving petty offences it should be permissible for the alleged offender to plead guilty, if he so chooses, without being required to put in appearance either in person or through an authorized agent.

In England there was provision for this sort of pleading, so to speak, by post. Under the Motor Vehicles Act provision has now been made for a person who is alleged to have committed a breach of some provision of the Motor Vehicles Act, to plead guilty by post and to pay up the fine indicated in the summons. In the opinion of the Committee a similar provision should be made in respect of petty offences under every penal statute, trial for which offences had to be under the Criminal Procedure Code. The Committee proposed, therefore, to recommend that a new Chapter be incorporated in the Code of Criminal Procedure as Chapter XXII-A providing procedure which would enable persons accused of petty offences to plead guilty and pay up the fines without the necessity of their having to appear either in person or through duly authorised agents in court.

Conditions under which evidence given in the committing court to be admissible in trial.

Section 288—Section 288 of the Code provides for treating evidence given under Chapter XVIII of the Code as evidence in the Court of Session. The provisions of this section, however, are slightly vague in so far as it gives no indication as to the stage when a Presiding Judge is to receive the evidence given in the court of the Magistrate, as evidence, in the Sessions Court. Some High Courts have interpreted this section to mean that in exercising his discretion a Presiding Judge has to take into consideration the fact whether or not the statement made by the witness during the course of the inquiry was more trustworthy than the statement made by him during the trial in the Court of Session. It was a very difficult task for the Judge to come to a decision contemplated above at a time when the question as to whether or not the evidence should be brought on the record arose. The Judge could only appropriately decide whether the statement made by the witness in the committing court was more reliable or whether the statement that the witness made in the Court of Session was more reliable at a much later stage, that is, when the entire evidence was before the Judge. According to the Committee it was desirable to suitably amend section 288 in order to make it possible for the Judge to receive the evidence of the witness made in the committing court when that evidence was found materially different from the evidence given by the witness at the trial in the Court of Session.

It has been the experience of Judges and all those who have had anything to do with the administration of justice that witnesses resile, very often, from their previous statements, indeed, it is growing into a technique of defence to make witnesses give different statements at different stages of the trial. Under such conditions it was necessary in the interest of justice, to have the earlier statements of witnesses as evidence so that the Judge could be in a better position to discover the truth. With this object in view the Committee has suggested an amendment to section 288. The relevant amendment is to be found in Appendix D at serial 28.

Recording of memorandum of evidence to the dictation of the Magistrate or Judge.

Section 356—The Committee is of the view that sub-section (3) of section 356 should conform to the provision contained in its sub-section (1) in regard to the manner of recording evidence, hence the Committee has suggested that the word "from"

in the clause "the evidence of each witness shall be taken down in writing in the language of the court either by the Magistrate or Sessions Judge with his own hand or 'from' his dictation in open court" occurring in sub-section (1) be substituted by the word "to" and the words "to his dictation" be introduced in sub-section (3). The changes that the Committee has proposed to be made in section 356 are to be found in Appendix D at serial 29.

Sentences to run concurrently only for reasons to be recorded.

Section 397—Under the provisions of this section a court is empowered to direct a sentence passed on a person subsequent to an earlier sentence passed on him in respect of another offence to run concurrently with the sentence passed earlier. Although the section does not in so many words enjoin a court to give reasons for directing a subsequent sentence to run concurrently with an earlier sentence passed on the accused in respect of another offence yet the underlying idea clearly appeared to be that; further, experience had shown that courts without giving adequate consideration to the question as to whether the facts and circumstances of any particular case justified the direction permissible under section 397, Criminal Procedure Code or not, more or less, automatically, directed the subsequent sentence to run concurrently with the previous sentence. In the opinion of the Committee this was an undesirable use of the powers conferred on courts under the provisions of this section. The Committee, therefore, was of the opinion that this section should be amended so as to make it obligatory on courts to give reasons whenever they direct a subsequent sentence to run concurrently with a sentence passed in an earlier trial on the accused. The suggested amendment is to be found in Appendix D at serial 30.

Section 403—For reasons given above no amendment in this section by way of barring a fresh complaint after the dismissal of a previous complaint under section 203 or 253 was necessary.

Revisional powers of District Magistrates and Sub-Divisional Magistrates may be withdrawn.

Section 435—The Committee feels that the provision contained in section 435, giving concurrent revisional powers to the District Magistrate and the Sub-Divisional Magistrate along with the High Court and the Sessions Judge, was an unnecessary duplication of powers. Having in view the fact that the appellate powers of the District Magistrates have been withdrawn by the U. P. Act XXXVI of 1948, continuing the revisional powers of the District Magistrates and Sub-Divisional Magistrates appeared incongruous. With a view to do away with the incongruity the Committee has proposed the changes specified in Appendix D in sub-section (1) of section 435 and as a consequence thereof also proposes the deletion of sub-sections (2) and (4) of the section. The proposed changes are indicated in Appendix D at serial 31.

Section 436—Since we have suggested an amendment in section 435 to the effect that the revisional powers conferred under that section on District Magistrates and Sub-Divisional Magistrates be taken away, a consequential amendment was required in section 436 as well. The words "and the District Magistrate may himself make, or direct any subordinate Magistrate to make" after the words "Magistrates subordinate to him to make" and before the words "further inquiry into any complaint . .

. . ." be deleted. The relevant amendment is to be found in Appendix D at serial 32.

Section 437—In view of the proposed changes in section 435, section 437 required consequential changes—these changes are, however, merely of a varbal nature and the relevant changes are indicated in Appendix D at serial 33.

Except in cases of enhancement of punishment, Sessions Judge may pass final orders on revision applications.

Section 438—Under this section the Sessions Judge could not pass final orders on an application in revision but had to make a recommendation to the High Court and the High Court could thereafter make such orders as it thought fit. The Wanchoo Committee and the Law Commission considered the advisability of retaining the provisions of section 438 as it now stands and they came to the conclusion that there should be a change in this section and that it should not be necessary for the Sessions Judge to make a recommendation to the High Court in a case in which the Sessions Judge thought it desirable to interfere in the exercise of his revisional jurisdiction but that the Judge should be given the right to pass final orders on applications in revision made to him. Though the Committee is in agreement with the opinions expressed above yet it thought it necessary to suggest that in cases in which the Sessions Judge was of the opinion that the sentence passed on an accused person by the Magistrate was inadequate and should be enhanced then in such cases the Sessions Judge should not be given the right to make final orders enhancing the sentence. The cases in which enhancement of sentence is sought when they come up before the High Court are heard by a Bench of two Judges and are not disposed of by a single Judge; therefore, the Committee was of the opinion that this valuable right of the accused of having the question of enhancement decided by a Bench of High Court should not be taken away but should be preserved. In view of what has been said above, the changes recommended by the Committee in this section are to be found in Appendix D at serial 34.

Proceedings under section 479-A, Cr. P. C. to bar proceedings under sections 476 to 479 Cr. P. C. (inclusive).

Section 479-A—The words of sub-section (6) of section 479-A did not appropriately convey the idea with which this section appears to have been incorporated in the Code, namely, to bar proceedings being taken under sections 476 to 479 (inclusive) for the prosecution of a person in case proceedings had already been taken under section 479-A; it could never have been the intention of the framers of section 479-A to bar proceedings being taken under sections 476 to 479 regardless of the fact whether or not proceedings had been taken under section 479-A. Accordingly, the Committee has suggested a change in the words of sub-section (6) of section 479-A as indicated in Appendix D at serial 35.

Disposal of cases of perjury and forgery committed in relation to proceedings before the High Court.

While suggesting the aforementioned changes in sub-section (6) of section 479-A the Committee was further of the opinion that a proviso should be added to section 479-A with a view to empower the High Court to try and punish persons who gave false or fabricated evidence in relation to proceedings in the High Court. This power was being proposed to be conferred

on the High Court in order to expeditiously dispose of cases of perjury and forgery, etc. committed by persons in relation to proceedings before the High Court. By suggesting the conferment of the aforementioned powers on the High Court the Committee was not suggesting any drastic change for it was well-known that a High Court was a court of record and as such it possessed an inherent power of trying offenders committing offences against justice in its presence or in the case of judicial proceedings before it. The Committee has accordingly proposed the addition of a proviso as specified in Appendix D at serial 35.

Section 487—In our interim report we had suggested an amendment in section 487 so as to include section 485-A also in excepting clause which appeared to have been omitted by oversight. The attention of the Committee was drawn to the fact that this amendment had already been made in this section by a Central Act (Act 36 of 1957). Hence there remains no need to amend this section.

Heading of Section 528 Cr. P. C.

Section 528—The heading of this section appears to be inappropriate. The Committee suggests that the heading of sub-section (1) of section 528 should be "withdrawal and transfer of cases by Sessions Judge". In the opinion of the Committee sub-sections (5), (6) and (6-A) of section 526 contained very wholesome provisions and that there should be similar provisions in section 528, Criminal Procedure Code, as well. The Committee, therefore, suggests that three sub-sections (I-D) (I-E) and (I-F) as set forth in Appendix D at serial 36 be added after sub-section (I-C) of section 528.

Section 539-AA—Section 539-AA provides for the swearing of Affidavits which are to be used for purposses mentioned in sections 510-A and 539-A. The Committee has seen no adequate reason for confining the provisions of this section to affidavits which are required to be filed under section 510-A or 539-A.

Verification of affidavits to be used in subordinate criminal courts.

The Committee is of the opinion that there should be a provision under this section for verification of affidavits by Commissioners of Oaths to be appointed for the purpose by the District Judge for each district. As it is, affidavits which are to be used in criminal courts before Magistrates or Sessions Judges are sworn only before Magistrates. This leads to considerable harassment to litigants and also causes an unnecessary burden on Magistrates. Affidavits for use in the High Court and Civil Courts are sworn before Oath Commissioners. The Committee has seen no good reasons why Oath Commissioners appointed by the District Judges for the purpose of swearing affidavits to be used in criminal courts could not be trusted. The Committee has, therefore, suggested a change in sub-section (1) of section 539-AA. Such change is to be found in Appendix D at serial 37.

CHAPTER VI

OF TRIALS OF PETTY OFFENCES

It has been thought advisable by the Committee to make provision, in the Code of Criminal Procedure, which could enable an accused person, in respect of petty offences, to enter a plea of guilty without the necessity of his being present, either personally or through counsel. For this purpose we propose the incorporation of a new Chapter, to be numbered XXII-A, and having the heading "of trials of petty offences".

Petty offences punishable with fine only not exceeding Rs.100.

These petty offences have been divided in two categories. In the first category we have put in those offences which are punishable with fine only, and that too not exceeding rupees one hundred, under any law in force in the country. Under the existing provisions of law even in those petty cases in which the ultimate punishment awarded may be a few rupees the accused has to appear personally in court on receipt of the summons. This often causes great harassment to the accused persons, particularly to those residing far away from the court trying the offence, or to those persons who are professional men.

Suggested procedure.

We propose that in section 265-B a summary method for the disposal of such cases be provided which would not compel the accused to be present in the court but permit him, if he choses, to plead guilty by post by sending a letter and remitting the proposed fine to the court issuing the summons. In such cases the court would, along with the summons send to the accused a concise statement of the facts relating to the charge against him as placed before the court by or on behalf of the prosecution and also specify in the summons the amount of fine which was proposed to be levied in the event of his pleading guilty. In the summons a date would be specified by which date the accused could notify to the court, by means of a registered letter, his plea of guilty and also remit the proposed fine by means of money order or any other convenient and certain method. The summons would bear a second date on it which shall be the date for the trial of the case in the event of the accused not pleading guilty. If the accused did not plead guilty, then he would naturally have to appear in the court and the case would thereafter be tried in the manner provided in the Code: but if he pleaded guilty, and remitted the fine by post, his presence in court would not be necessary and no further proceedings in respect of the offence shall be taken against him. At the time of making final orders in the case, necessary particulars about the case would be recorded by the Magistrate in the manner provided in section 265-D.

At present this method, so to speak, of pleading guilty by post and paying the fine by post, is provided for in the Motor Vehicles Act only and that too, in respect of some minor

offences punishable under that Act . The Committee thinks it just that this method of pleading and trial should be extended to other offences punishable under any law with fine not exceeding rupees one hundred.

Petty offences punishable with imprisonment or fine or both.

In the second category of petty offences, we suggest placing those offences which are punishable under any law with imprisonment for a term not exceeding three months or with fine not exceeding rupees five hundred or with both. There are many offences provided in the Indian Penal Code also which would fall under this category, but out of those offences we have included only offences punishable under sections 137, 160, 172 first part, 173 first part, 174 first part, 175 first part, 180, 184, 185, 186, 187 first part, 188 first part, 277, 278, 290, 334, 341, 352, 358, 426, 447 and 491 only. Although in respect of offences punishable under sections 263-A, 292, 294, 510, etc. a fine not exceeding the limit set by us was provided, yet we did not consider it desirable to include these for trial under the new method. The reason for this was that on a perusal of column 4 of Schedule 2 of the Code of Criminal Procedure we found that in respect of offences punishable under sections 263-A, 292, 294 and 510 a warrant ordinarily issued in the first instance. According to the method of trial which we proposed, only a summons was to issue to the accused in the first instance. We have, therefore, excluded these offences from the purview of the proposed Chapter XXII-A. Similarly, some other offences like one punishable under section 171 (wearing garb or carrying token used by public servant with fraudulent intent) in which the maximum punishment provided was three months or fine of rupess two hundred or both, has been excluded from this Chapter because an offence of this nature, in the opinion of the Committee, should not be dealt with under this Chapter.

Earlier, we classified offences in respect of which an accused person could plead guilty without his having to appear in court into two categories, one: those offences for which a sentence of fine only could be imposed, and the other where a sentence of imprisonment also could be imposed. In respect of those offences where the court could only impose a sentence of fine, the court could without much difficulty indicate on the summons itself the fine that was proposed to be imposed on the accused for his having committed the alleged offence, but in case of a sentence of imprisonment being awarded the court should not, in our opinion, prejudge the *quantum* of sentence to be imposed without first having before it any plea in mitigation which the accused may choose to send along with his plea of guilty, and we may here point out that in the procedure visualised by us and indicated later, the accused will have the right of pleading in mitigation of the sentence that was likely to be passed by the court in his absence. It may here be stressed again that under the procedure suggested by us, an accused person was under no obligation to plead guilty, whether it was a charge in respect of which a sentence of fine only could be imposed, or in respect of an offence which was punishable with imprisonment; what we wish to provide for is that in case an accused person pleaded guilty, then he should,

if he so chooses, have the advantage of not having to run to the court to face a trial. In case the accused does not plead guilty, then the case was to proceed in the manner in which such a case could proceed under the law. It may be interesting here to note that a similar procedure now obtains in England—the procedure is to be found in the Magistrates' Court Act, 1957. According to this procedure, it was the duty of a Prosecutor to have served upon the accused along with the summons a concise statement of such facts relating to the charge as was to be placed before the court on behalf of the prosecution in proof of the accused's guilt. In the summons a date was to be specified by which the accused person could notify to the court by registered post or otherwise his intention to plead guilty and he could also place before the court any facts and circumstances which he wanted to be taken into consideration in mitigation of any sentence that the court was likely to pass. The summons indicated another date which was a date for the appearance of the accused in the event of his not pleading guilty, but wanting to face a trial. In the event of the accused pleading guilty, he was not required to attend the court personally. On receipt of the plea of guilty, if the court was satisfied that the statement of facts constituting the charge had been served upon the accused personally the court proceeded to hear and dispose of the case in the absence of the accused or even in the absence of the Prosecutor and pass judgment thereafter. If the court imposed a sentence of fine only and the same was paid within a specified time by or on behalf of the accused, the proceedings terminated, but if the fine was not paid by the accused or in case the court passed a sentence of imprisonment, the accused was to be compelled to pay the fine, or as the case may be, to surrender and to undergo the sentence imposed on him.

Suggested procedure for such petty cases.

We, therefore, considering all the various aspects of this matter suggest the addition of a section in the terms indicated later, namely, section 265-C in this new Chapter XXII-A.

One of the things which we carefully considered was whether or not we should make a provision whereby the court would be obliged to defer passing a sentence of imprisonment on the accused except in his presence. What was suggested was to add a proviso to section 265-C in the following words:

If presence of accused is necessary when sentence of imprisonment is pronounced.

> "If the court decides to pass a sentence of imprisonment, then it shall not pronounce the sentence except in the presence of the accused."

The ground on which such a proviso could be justified was that the accused should be present in court to receive a sentence of imprisonment. It was further said that if a sentence of imprisonment was passed on an accused in his absence, then there was likely to be considerable difficulty in his apprehension subsequently for making him serve his sentence.

Presence of accused not necessary for pronouncing a sentence of imprisonment.

The Committee after careful consideration of all the circumstances of the matter came to the conclusion that it was better not to add the proviso, because in the view of the Committee, the advantage that was likely to accrue was, by and large, outweighed by the disadvantages that were likely to accrue; some

of the obvious disadvantages were that if the proviso was there, then in many cases accused persons would avoid appearance in court and thereby delay the proceedings. Further, by and large, the accused persons would come up later and attempt to withdraw their plea of guilty and take a false plea just to defeat and delay justice.

After a sentence of imprisonment had been passed against the accused or even in the case of a fine not being paid by the accused, a warrant of arrest could be issued against him and it would be the job of the police to apprehend him to make him undergo the sentence or recover the fine, as the case may be.

No possibility of a fraudulent plea of guilty being put in by another person.

There was one other matter which came up for consideration before the Committee. It was suggested that the new procedure envisaged by us did not eliminate the possibility of a plea of guilty being fraudulently put in by some one interested to secure conviction of the accused and yet there was nothing in this procedure to entitle the accused to show to the court at any subsequent stage that the plea of guilty on which the court acted was not his plea. The Committee was firmly of the opinion that no such danger was really inherent in the proposed procedure. In fact there was sufficient safeguard in the procedure visualised by us [i.e. sub-section (2) of section 265-C] that a Magistrate could and would only act in case he was satisfied that the summons had been personally served on the accused. It did not appear possible to the Committee that after summons had been served on the accused, he would keep silent in case he was not guilty and afford a chance to some one else to enter a false plea on his behalf.

The provisions of the proposed Chapter XXII-A are embodied in Appendix D at serial 38.

No appeal except as to the extent and legality of the sentence passed.

Section 412-*A*—In the cases disposed of under this Chapter no appeal would lie except as to the extent and legality of the sentence and for that purpose we have suggested a consequential amendment to section 412 by adding a new section 412-A after section 412 as indicated in Appendix D at serial 39.

CHAPTER VII

REVENUE LAWS AND THEIR APPLICATION

The Committee investigated into the disposal of revenue work by courts as also studied the revenue laws with an idea of finding out which of the laws were mostly responsible for delays, harassment and corruption in regard to revenue cases.

Inadequacy of strength of officers to decide revenue cases.

The Committee's investigations revealed that one of the primary causes for delays and consequent harassments and corruption was, as noticed in regard to the disposal of civil and criminal cases, the want of sufficient number of officers to dispose of the volume of revenue work that now comes before courts for disposal.

In respect of the revenue jurisdiction one very marked circumstance which cried for recognition was the circumstance that a good deal of delay, harassment and corruption prevalent in revenue courts could be directly traced to the peculiarly unconnected and sometimes overlapping jurisdictions exercised by courts in disposing of revenue cases. There have been so many changes in recent times in the *forum* in respect of revenue cases that often a litigant had to shuttle between revenue and civil courts before he could get a decision of his cause. Legislation in respect of revenue laws in recent times has been done in a more or less, haphazard way. Revenue laws have been dispersed in several enactments in some of which the pattern followed in one has been, more or less, abrogated in the other: all this has brought about in our revenue laws unnecessary complications both in regard to substantive rights as also in regard to matters of procedure.

There is, as the law stands today, some fundamental conflict both in regard to the concept of rights as also in regard to the jurisdiction through which such rights could be enforced.

The Committee, after examining fully all the relevant laws relating to land tenures and all the legislation that brought about changes in the main revenue laws, came to the following conclusions:

Need for consolidation, simplification and Codification of all revenue laws.

(1) That it was essential that all laws relating to land tenures and other agricultural lands and all laws affecting rights of persons in such lands should be consolidated and be enacted in a single enactment.

(2) That many of the provisions of laws relating to land tenures have become outmoded or obsolete due to changed circumstances and the changed outlook in respect of land tenures. Further, many of the provisions relating to land tenures are unnecessarily complicated and procedures in respect of many matters are unnecessarily time-consuming. We have further observed that there is an amount of overlapping and duplication. It is, in the opinion of the Committee, absolutely essential that the aforementioned shortcomings and defects should be removed from the revenue laws as soon as practicable.

The Committee finds that strictly under its terms of reference it could not undertake the task that would be necessary for eradicating the evils pointed out above from our revenue laws and consequently the Committee has considered it desirable to place before Government the glaring defects discernible in those laws. The Committee also considers that it would not be thought presumptuous on its part if it were to suggest that the proper manner for dealing with the questions that naturally arose out of what has been stated above was to deal with these questions by appointing a Committee to go into all the questions and to make necessary recommendations for improving and modernising our revenue laws.

The various laws relating to land tenures and agricultural lands which can usefully be consolidated into a single enactment are indicated in Appendix E.

CHAPTER VIII

POLICE INVESTIGATION AND OTHER RELATED MATTERS WHICH AFFECT THE ADMINISTRATION OF CRIMINAL JUSTICE

Wide-spread complaints of delay and inefficiency.

There was wide-spread complaint about inordinate delays in the investigations of offences by the police and general inefficiency of the investigating staff which has had baneful repercussions on the administration of criminal justice.

Desirable to take up the question of police investigation.

The question of police investigations was constantly brought before the Committee by witnesses and members of the public interested in the administration of justice, and the matter being more or less intimately connected with some of the matters in which the Committee has been asked to investigate, the Committee thought it desirable to consider this matter of police investigations and the related matters and to place its considered views before Government.

Investigation by the police was an integral part of criminal procedure and courts subordinate, dealing with criminal cases, had constantly to probe into these investigations in order to discover the truth.

Repercussions of faulty investigation on the administration of criminal justice.

The gravamen of the charge against police investigations and indeed as against the police, by and large, was that dilatory methods, methods which were not only time-consuming but thoroughly out of joint in the vastly changed pattern of society, were adopted. The failure or even the quasi-failure of investigations directly affected the ultimate result of a criminal case. It is generally understood that unjustified acquittals are just as serious matters as unjustified convictions, for both have their repercussions on society at large. Unjustified acquittals often bring the administration of justice into hatred and contempt and thereby shake the very foundations on which this noble administration was built.

Investigation into the causes of acquittals would show that, by and large, acquittals were made because of inefficient or ineffective investigations. If, therefore, becomes necessary, even though in outline, to find out the causes which contribute to this result.

Insufficiency alleged to be a cause of inefficiency.

The police generally complain that much of the inefficiency that is discernible in their work is due to their department being understaffed. They point out that during recent years the requirements of law and order and various other duties have put such a burden on the police force which their present strength was unable to properly cope with. Whether this view point was justified or not we are not competent to judge, nor do we make any pretence to judge it. Our investigations have indicated that it was essential for the better administration of criminal justice that there should be an efficient organisation to deal with investigations into crime. An efficient investigating agency required not only efficient men—men with the

Necessity of scientific investigation.

know how—but men who were equipped with all the requirements for carrying out their job. The criminal today was not the simple artless culprit but he was now efficient to an extent to which he can set at naught the old ways of attempting to track him and bringing to justice. Investigation along scientific and modern lines was therefore a crying necessity, and it has to be admitted, we believe, that there was today in Uttar Pradesh no real scientific investigation. There is, we know, a bureau of scientific investigation or some such bureau, but this bureau, by whatever name it is called, has not given much evidence of its utility in bringing to book criminals.

Thorough knowledge about ballistics necessary for proper investigation.

In recent years firearms are being used more and more by criminals and the criminal now takes pains to obliterate all possible clues that he can think of. So that for proper investigation into crimes committed with firearms and by criminals who take steps to obliterate, to the best of the ability, all telltale marks which could point to their complicity, the investigator has to know all about ballistics and has to know all that modern science has discovered to catch criminals who have taken pains to obliterate their trail.

Investigating staff to be separate from law and order staff.

Today there was no separate investigating agency in the police cadre, except the C.I.D. which is exploited in very very rare cases. In our opinion, it is essential for quick and efficient investigation into crimes that the investigating staff should be separate from the law and order staff. The Law Commission in their 14th Report at page 741 observed as follows:

> "We think on the whole that there is great force in the suggestion that, as far as practicable, the investigating agency should be distinct from the police staff assigned to the enforcement of law and order. We do not, however, suggest absolute separation between the two branches. Even officers of the police department have taken the view that if an officer is entrusted with investigation duties, his services should not be required for other work while he is engaged in investigation. The separation of the investigating machinery may involve some additional cost. We think, however, that the exclusive attention of the investigating officer is essential to the conduct of an efficient investigation and the additional cost involved in the implementation of our proposal is necessary. The adoption of such a separation will ensure undivided attention to the detection of crimes."

If anything, the Committee is prepared to go a step further than the view expressed by the Law Commission as quoted above. In our opinion, the investigating staff must be of selected police officers, for every person in the police force cannot be expected to have an equal amount of flare for investigation. An investigator requires certain special qualities which give him an insight into men and matters and which in certain cases provide uncanny vision. The investigating staff needs specialised training in the use of scientific aids. The training has not only to be long but intensive, and it appears to us that it was not necessary to spend this time and energy on every member of the police service but to train only those of the

service who were to man the investigating section of the service. At the higher rungs of the ladder the investigating agency, however, can easily get merged with law and order agency, for at that stage the State would require the services of senior men for purposes of supervision and direction.

Bureau of Scientific I gation at level and a regional suggested.

A good deal of improvement in investigation would be made if the State had something in the nature of a Central Bureau for Scientific Investigation, e.g., ballistics, microphotography, tracking, various types of chemical analysis, etc. etc. One of the duties of the central bureau for investigation would be to train the investigating staff and further to maintain a refresher's course. The Committee is also of the opinion that there should be scientific bureaus on a smaller scale maintained at each district headquarter, at any rate in one out of two or three adjoining headquarters, and that at these headquarters there should always be a nucleus of specialists, though they may be of a slightly lower competence than those manning the central bureau. It should be the duty of these smaller bureaus to aid all investigations which present difficulties to the local investigating staff. Every crime of complexity or importance should be reported by the investigating staff to these bureaus and these bureaus should keep an eye on such investigations. These smaller units—the district bureaus or inter-district bureaus—should have an officer who may be called a special officer, or these officers may be given some other name as suits the set up, who should be in overall charge of matters and care should be taken to select an officer for this post who should be able to answer the many calls that would be made on his time, energy and ingenuity.

Public co-o tion in inve tions shoul sought.

The British in India depended, at any rate in the early days of their administration, on a system of informers. We do not approve of the type of informers that functioned in the British regime to function in modern India, for such individuals disfigure the social structure and lower human dignity, but nevertheless, it is essential that there should be public co-operation in tracking down crime as also in preventing crimes being committed. A sense of duty in the common man has to be created: a sense that it is his duty not only not to commit crime but also to prevent crime being committed, and, if crime is committed by some one, to assist officers of the State in finding out the culprit. There has been no useful propaganda so far undertaken to achieve the aforementioned end. All agencies available for this purpose, particularly the Gram Sabhas and the Panchayats should be geared and exploited to this end.

Improvement amendment rules and re tions doubtful

Some people suggested that a careful revision of rules and regulations dealing with investigations could bring about an improvement in investigations. We, however, are not optimistic about it, for, in our opinion, the rules and regulations touching upon investigations had very little in them with which any one could find any serious fault. Our investigations have indicated that the real fault lay more in non-compliance with rules and sometimes in even acting contrary to them that brought about undesirable results.

Lack of proper supervision.

It is a sad spectacle, but nevertheless it is a common spectacle, that there was such a lack of sense of duty and responsibility even amongst officers. There was an apparent lack of proper supervision and this lack of proper supervision largely made it possible for the vices which obtain all round to reach the proportions they have. Delays and deviations from the strict path of duty can, to a large extent, be controlled if there was adequate supervision by superior officers.

Importance of proper maintenance of case diaries.

Case-diaries play a fairly significant role in criminal prosecutions. Therefore, the maintenance of case-diaries was absolutely essential. The experience of courts had been, certainly within the last ten years or so, that case-diaries were very often not properly maintained, at any rate, the provisions in police regulations in regard to maintenance and despatch of case-diaries to headquarters were not strictly and accurately complied with.

Copies of case-diaries to be also submitted to Magistrates.

There was very little, if any, check on investigations by the headquarters staff after an examination of case-diaries. This was a sad state of affairs and it would be conducive to better investigations and more honest investigations if greater attention were paid by senior officers to investigations and a check kept on the case-diaries. The suspicion that attaches to police investigations and to records made in police diaries could be considerably eliminated if copies of case-diaries could also be submitted to Additional District Magistrates (Judicial) or to Magistrates having jurisdiction to try the case and if such Magistrates were enjoined to sign and date them as and when they received copies of the case-diaries. The Magistrates could also very usefully keep a check on the progress of investigations and thereby eliminate unnecessary delays.

Identification of accused and property

Delays in identification proceedings of accused and property.

There was some amount of delay due to delays in identification of accused or identification of property. The delay was sometimes caused because of Magistrates not being available for conducting identifications or the failure to have the witnesses to attend identification parades. A good deal of modernisation of identification proceedings both in regard to the accused and the property was essential. Since it was not within the purview of this Committee to make recommendations in regard to these matters the Committee does not propose to probe into them in any detail excepting making a reference to them and expressing the view that attention should be given at an early date to modernising identifications and bringing about greater despatch in holding and conducting them.

Delays due to reports not coming in time from the Chemical Examiner, Serologist or the firearms expert

Delays in cases due to delay in the reports of Chemical Examiner, Serologist and firearm expert.

The data collected by the Committee shows that the disposal of many cases was delayed due to non-receipt of the reports of the chemical examiner or the serologist in time. It was found that this delay was sometime due to the fact that the articles which had to be examined were sent to the chemical examiner after considerable delay. Under the existing rules articles are sent to the chemical examiner either through the Magistrate or through the civil surgeon. It was suggested that

if the investigating officers could be authorised to make a reference directly to the chemical examiner then there was likely to be less delay in the despatch of articles for chemical examination. We have examined this suggestion with care but we do not feel that this sort of direct dealing by the investigating officer with the chemical examiner in respect of despatch of articles was not fraught with dangers of many kinds. We would, therefore, not recommend a change. We, however, wish to emphasise that it should be the duty of the investigating agency to see that articles, which have to be sent to the chemical examiner, are despatched to him for examination as early as is practicable, and further that every effort should be made to see that the chemical examiner, the serologist or the ballistic expert, as the case may be, sends his report within a reasonable time. In case our recommendation in regard to the Central Bureau of Investigation and the smaller bureaus which we have suggested at district or inter-district headquarters is accepted, then all this delay which now takes place at the chemical examiner's or the serologist's or the ballistic expert's end will automatically disappear, for there will be so many agencies available, instead of only one as now obtains, for the aforementioned purposes.

Delay in Public Prosecutor's Office in submitting charge sheet.

The Police Regulations require a charge-sheet to be submitted through the Public Prosecutor. Under Paragraph 122 of the Regulations, the Public Prosecutor is directed not to retain a charge-sheet for more than a week, and that in no case can he retain it for more than a fortnight. Investigations by the Committee indicated that in many cases charge-sheets were retained in the office of the Public Prosecutor for several weeks, and in some cases even for a month or more, before they were submitted to court.

In the chapter on bails we have suggested that it must be made obligatory on the prosecuting staff to let a court know definitely the date by which the charge-sheet was to be submitted so that the court could fix a date for the appearance of the accused accordingly. This procedure that we have suggested would not only eliminate the amount of harassment of the accused but would also put a check on the unnecessary delay which, in our opinion, takes place in the office of the Public Prosecutor.

Copies to be supplied under section 173 Cr. P. C. to be prepared in public prosecutor's office. Necessary staff and equipment for this purpose.

In some districts there was a practice that along with the charge-sheet copies of the statements of witnesses recorded under section 161, Criminal Procedure Code and other documents which were required to be furnished to the accused under section 173, Criminal Procedure Code were also put in. These copies took time for preparation and this often delayed the submission of the charge-sheet. We are of opinion that there should be no delay in the submission of the charge-sheet in court and that copies required to be given to the accused under section 173, Criminal Procedure Code should be prepared by Public Prosecutor's office and there should be adequate staff and equipment such as duplicators and typewriters, etc. in his office. This will not only obviate delay in the submission of the charge-sheet but will also assure that the copies that are to be served are accurate and reasonably legible. There was considerable complaint about the copies supplied to

the accused being illegible and very often inaccurate.

Adequacy of strength of prosecuting staff.

We found there was delay in the trial of cases because there was not adequate prosecuting staff in certain districts. There was also complaint about the inefficiency and unscrupulousness of the prosecuting staff attached to Magistrates' courts. It goes without saying that inefficiency of the prosecuting staff, from whatever cause the inefficiency may arise—insufficiency or incompetence—was bound to react on the quality and correctness of the decision. It was of vital importance that our magisterial courts approximate more closely to well organised judicial tribunals than they do at present. These are matters about which, however, the Committee has not been specifically called upon to report, but the Committee had to hear these grievances and therefore it thought it desirable to put this matter in the report so that Government's attention could be pointedly drawn to it.

Before parting with this subject we should like to quote some of the observations of the Law Commission on this matter. This is what they said in Chapter 35 of their 14th Report at page 769:

> "The Police Department is charged with the duty of the maintenance of law and order and the responsiblity for the prevention and detection of offences. It is naturally anxious to secure convictions. Not infrequently, relevant witnesses are kept back by the prosecution. Intimidation of defence witnesses is also not unusual. These are the results of an excess of zeal by the police officers and a want of realisation of their true function. But if the purity of judicial administration is to be maintained, such conduct must be sternly checked. We have also been told of police officers of the lower grade in charge of the prosecutions deliberately weakening their cases out of corrupt motives. It is obvious that by the very fact of their being members of the police force and the nature of the duties they have to discharge in bringing a case to court, it is not possible for them to exhibit that degree of detachment which is necessary in a Prosecutor."

Prosecuting agency to be separate from police department.

The prosecuting agency, as it at present obtains, is a link of the police department. According to the recommendations of the Law Commission this agency should be separated from the police deparatment. The Law Commission recommended a whole-time officer who should be made responsible for prosecutions in every district and who may be called Director of Public Prosecutions. Such an officer could be, it was visualised, the head of the entire prosecuting machinery in the district and was to exercise administrative control over all prosecutions in the magisterial as also in sessions courts. There can be no doubt that a separate organisation of the type visualised by the Law Commission could subserve the interests of prosecutions very much better than obtains at present.

CHAPTER IX

OF BAILS

The evidence that the Committee had before it unmistakably showed that there was a large amount of corruption, delay and harassment in having accused persons released on bail.

Stages in the procedure for disposal of bail applications.

There were various stages through which one had to pass before an accused was actually out of prison on bail. All these stages provide opportunities to petty officials to take illegal gratification. In order to devise a suitable procedure to stop corruption in the matter of bails it would be necessary to examine the various stages through which one had to pass before the ultimate release of a prisoner on bail. These stages are:

(1) *Presentation of applications for bail to the Magistrates and obtaining orders thereon*—At present there is no prescribed time or procedure for presentation of applications for bail before Presiding Officers with the result that lawyers and *pairokars* usually present these applications to the "Criminal Ahalmad" or the Reader of the Magistrate. Unless the Ahalmad and the Reader are tipped these applications are not put up before the Magistrate on the ground that the Magistrate is busy with other work and he would be annoyed if he is disturbed. In order to eliminate corruption at this stage it is necessary to make some simple rules for presentation of applications before Magistrates.

(2) *Calling for the report of the Public Prosecutor*—The Magistrate on presentation of an application usually passes an order calling for the report of the Public Prosecutor. Sometimes the application is kept by the court staff and is sent to the Public Prosecutor after considerable delay. The Court staff has, therefore, to be given another tip to expedite the sending of the application for report. The Public Prosecutor also takes his own time for making his report. In order to obtain a report quickly or to obtain a favourable report, *pairokars* approach the Prosecuting staff also and spend money there. It, therefore, seems necessary to prescribe some procedure so that the reports from Public Prosecutors are received expeditiously.

(3) *Passing of orders granting or refusing bails*—At present there is no prescribed time or procedure for passing orders on bail applications with the result that pairokars approach the subordinate staff of the Magistrate and elicit their help to get the orders of the Magistrate on bail applications. It seems necessary, therefore, to prescribe some fixed hour at which Magistrates should call up bail applications for disposal and dispose them of.

(4) *Verification of status of sureties*—There is no prescribed procedure for the verification of the status of sureties. Sub-section (3) of section 499 of the Code of Criminal Procedure provides that the court may, for the purpose of determining whether the sureties are sufficient or not, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or the court may make such order in regard to the inquiry of the sufficiency as it may deem necessary. Apparently, it is under this provision that courts generally issue directions that surety bonds may be verified by the Tahsildar or some other official in the Tehsil. The verification of the surety bonds not only takes time but also causes unnecessary inconvenience and haranssment to the parties. The Tehsil staff often makes money in the process. In some cases lawyers also verify the status of sureties and some unscrupulous lawyers charge exhorbitant "fee" for this purpose. It is, therefore, necessary to prescribe some simple procedure for the verification of the status of sureties so as to eliminate opportunities for corruption and delay involved in the present methods of verification.

(5) *Transmission of release orders to the jail*—As soon as the surety bonds are verified and accepted by the Magistrate, an order is passed for the release of the arrested person which is handed over to the constable attached to the court for transmission to the jail authorities. The constable (Court Moharrir), it is alleged, has also to be tipped before he sends the release order to the Head Nazir for transmission to the jail.

(6) *Actual release from jail*—This is the last and an important stage in the process and it is said that the Warder and the jail staff also get their *haq* before actually releasing the arrested person. There have been complaints that release from jail have been delayed by inventing petty frivolous objections because the jail staff were not tipped.

Suggested procedure.

After careful consideration of the entire volume of evidence and circumstances the Committee is of the opinion that the undermentioned procedure may have a very marked effect on eliminating corruption and delays in matters relating to bails:

First remand report should contain grounds for opposing bail.

(1) *Report of the Investigating Officer*—The Investigating Officer along with his first remand report, which he has to submit within 24 hours of the arrest of the accused person, should send in a prescribed form the grounds, if any, on which he wishes to oppose grant of bail. For this purpose a provision should be made in the Police Regulations requiring the Investigating Officer to submit a report on a prescribed form which should furnish the following details:

(*a*) Name and parentage of the accused. His permanent address, his age indicating if there was any physical disability from which the accused suffered.

(*b*) Present address of the accused, if any.

(*c*) The offence which he is suspected to have committed.

(*d*) The actual part played by the accused in the commission of the offence so far as it is known by that time.

(*e*) His antecedents including his previous convictions, if any.

(*f*) Whether the bail would be opposed or not.

(*g*) If it is to be opposed, reasons for the same—with special reference to the following:

(i) whether there is any likelihood of the accused absconding;

(ii) whether the accused is likely to tamper with the evidence; and

(iii) whether he is likely to repeat the offence if enlarged on bail.

The information furnished by the Investigating Officer in the prescribed form at the initial stage would be readily available to the Public Prosecutor who could base his report on it in regard to any particular bail application moved on behalf of the accused and he would then have no justification in the majority of cases, to ask for time for obtaining instructions.

(2) *Presentation of bail applications*—In order to eliminate corruption and harassment at the stage of presentation of bail applications, two suggestions were made: one was to direct Magistrates to fix a certain hour each day for receiving bail applications moved on behalf of accused persons and thereby eliminating the necessity of lawyers or *pairokars* of accused persons approaching the subordinate staff of the Magistrate's court to have their applications for bail put up before Magistrates for orders. The other suggestion that was made, was that there should be a box conveniently placed in every Magistrate's court wherein applications for bail could be put in by *pairokars* or lawyers and that this box should be opened at two stated hours by the Magistrate personally or under his immediate supervision, by a clerk of his court and that thereafter the Magistrate should make a preliminary order calling for the report of the Public Prosecutor within a stated time and thereafter the Magistrate was to pass final orders on bail applications.

The Committee considered both the suggestions very carefully and it came to the conclusion that the second one appeared to be more advantageous and convenient from the point of view of the accused than the former as it gave an opportunity to an accused's pairokar or lawyer to put in bail application at any hour convenient to him. The convenience which was available under this scheme in the matter of presentation of bail applications was very valuable, particularly when one remembers that bail applications are usually moved through counsel and very often counsel find it difficult to put such applications at a fixed hour.

We may mention that in the Code of Criminal Procedure there was no specific provision for the presentation of applications for bail, indeed, a written application also did not seem to be obligatory in a case where the accused person was present before the court and wanted his release on bail. In our opinion, by prescribing this mode of presentation of bail applications, we would not be doing any violence to any rule of procedure. The Committee, therefore, had little hesitation in accepting the second of the two suggestions made in regard to the presentation and disposal of bail applications.

Box for bail applications to be placed in court within the view of the Magistrate.

The Committee is of the opinion that it should be prescribed by rules that a Magistrate should have in his court a locked box kept at a prominent place within his view for the purpose of receiving applications for bail. This box must have written on it clearly in bold letters in Hindi that it was a box maintained for receiving applications for bail. This box should be of a requisite size so that the bail applications written on foolscap paper may be put into it without having to be folded more than once.

Time for opening of bail box.

The box should be opened either by the Magistrate himself or under his direct supervision through a ministerial official of the court at two stated hours of the day—once at 12 noon and another time at 3 p.m.

(3) *Reports by Public Prosecutor*—Bail applications which are found in the box when it is opened at 12 noon should forthwith be sent to the prosecuting agencies to enable them to submit their report latest by 2 o'clock in the afternoon. The applications taken out from the bail box when it is opened the second time at 3 p.m. should be sent to the Public Prosecutor for report which should be submitted by him by 11 a.m. the following day.

Bail applications to be made in duplicate.

It is suggested that all applications for bail should be made in duplicate so that it may not be necessary to send the original application to the Public Prosecutor for his report and thereby risk the possibility of the original application being misplaced in the office of the Public Prosecutor. Only the duplicate copy would be sent to the Public Prosecutor for his report.

(4) *Passing orders on bail applications*—Bail applications taken out from the box at 12 noon should be taken up for disposal by Presiding Officers on the same day, immediately after lunch. These should be disposed of after giving an opportunity to the parties for arguments in case they are then present. In case any Public Prosecutor does not submit his report or appear personally to oppose the application the Magistrate shall, unless for reasons to be recorded, he has granted time, dispose of the application.

The applications taken out by the Magistrate from the box at 3 p.m. should be disposed of by him the next day before he starts the hearing of any case. In case of urgency the Magistrate should have discretion to pass orders on such applications on the same day.

(5) *Verification of the status of the sureties*—The present practice of referring surety bonds to the Tahsildar for verification of the status of the surety causes unnecessary delay and harassment, and results in corruption without serving any useful purpose in most cases. This work of verification of the status of sureties can be done by Presiding Officers themselves in a majority of cases. In the case of sureties belonging to urban areas, receipts of income-tax, sales tax, and house-tax, etc. should be considered good evidence of their status. In towns where there are Municipal Boards, Notified Areas or Town Areas, a certificate, receipt or any other document from such authority showing the financial status of a surety should be accepted in proof of status.

Documents in proof of the status of sureties from urban areas.

There may be some difficulty about sureties from rural areas. In such cases receipts for payment of land revenue should be considered as adequate proof of a surety's status. We are of the opinion that there should be evolved some rule in accordance with which Magistrates could determine the value of property in rural areas on the basis of rents paid: such a rule should be incorporated in the General Rules (Criminal). The extracts of *khataunis,* etc. proving the title of the sureties to the land should be admitted as good proof of their status. The sureties should further be required to file an affidavit that the land in respect of which the land revenue was paid by them or to which the extracts of khatauni related had not since been disposed of by them by way of sale, mortgage or other encumbrance. The surety should further be required to disclose in the affidavit if he had stood surety for any other accused in that case or other cases and, if so, whether those surety bonds were still in force.

Documents in proof of the status of sureties from rural areas.

(6) *Transmission of release orders to the Jail*—As soon as the surety bonds are accepted an order is made for the release of the arrested person. It should be the duty of the clerk of the court to prepare the order and immediately hand it over to the Court Moharrir for transmission to the jail through the Head Nazir. It should be prescribed that the Head Nazir should send all such release orders to jail on that very day by a time to be prescribed by the District Magistrate so that the prisoner may be released from jail the same day.

Head Nazir to send all release orders to jail by a prescribed time.

Under Rule 66 of the General Rules (Criminal) the Nazir is required to enter in a peon book all the release orders received by him within the prescribed time and arrange to deliver them through a peon to the officer in charge of the jail by 4 p.m. in winter and 5 p.m. in summer at the latest. We think that it should also be prescribed in the above rule that the Nazir shall enter in the peon book the time of his despatching the release orders to jail and shall obtain an endorsement on this peon book about the time at which the jail authorities received these so that in case there was delay in the release of any prisoner it could be easily checked at which end there was unjustified delay.

(7) *Actual release of the arrested person from jail*—In order to ensure that the arrested persons are released on the same day by jail authorities in compliance with release orders issued by courts, the Committee suggests that it should be prescribed in the Jail Manual that at a stated hour an officer of the jail, not below the status of a Deputy Jailor, shall attend the jail and see that the persons whose release orders have been received by the prescribed time are actually released in his presence. Any complaints made by prisoners or their *pairokars* should also be attended to by him.

Prisoner to be released in the presence of an officer not below the rank of a Deputy. Jailor.

Certain other matters relating to bails—If a person is arrested by a police officer in connection with a bailable offence, it is the duty of the police officer under section 496 of the Code of Criminal Procedure to release him on bail if he was prepared to give bail. It was stated by a large number of persons that often police officers did not accept bails and stated in their remand reports that the accused failed to offer bail. In order to check such undesirable state of affairs prevailing it should be prescribed in the General Rules (Criminal) that a Magistrate should inquire from an accused person when he is produced before him at the time when the police wanted him to be remanded to custody, if he was prepared to offer bail and whether or not he offered bail before the Investigating Officer and the same was refused by him. If it is found that an Investigating Officer had intentionally refused to accept bail though offered by an arrested person in a bailable offence, suitable action should be taken against him.

Action to be taken if Investigating Officer refuses to take bail in a bailable offence.

The Committee also observed that often in the personal and surety bonds obtained from the arrested persons by police officers or Magistrates a date was fixed for the appearance of the accused person in court without any regard to the fact whether or not the charge-sheet was likely to be received in court by that date. The result was that an accused person had to run to court again and again simply to be told that the charge-sheet had not yet been received, and he was given another date for appearance. A scrutiny of the Case Diaries maintained by Magistrates of the various places which the Committee visited during the course of its investigations indicated that Magistrates everywhere fixed a number of cases on the cause list only for the appearance of accused persons. This procedure not only caused considerable harassment to accused persons who were on bail and sometimes even to their sureties but also caused an amount of waste of the time of Magistrates because the cases set down on the cause list for appearance of accused persons had to be called out by the Reader and in each case the Magistrate had to fix another date.

Date for appearance of the accused in court after release on bail.

At one stage it was suggested to the Committee that initially no definite date should be stated in the personal and surety bonds of an accused person released on bail and it should only be mentioned in these that the accused would have to be present in court on a date to be subsequently notified to him;

it was suggested that sections 170 and 173 of the Code of Criminal Procedure should be so amended as to make it obligatory on the Investigating Officer after he submitted his charge-sheet to inform the accused about its submission and further requiring the accused to appear on date stated in the notice. The Committee after a careful consideration was of the view that this process while eliminating some harassment and inconvenience to the accused was likely to lead to other difficulties and delays, for in some cases the accused were likely to avoid service of such notice on them and thereby delay the progress of the case.

Time schedule prescribed for submitting charge sheet.

Paragraph 122 of the Police Regulations provides that an investigation should be completed as soon as possible and in any case the charge-sheet should reach the court within three weeks both in summons and warrant cases, and within six weeks in sessions cases, from the date of the lodging of the first information report. If Magistrates and police officers, while releasing an arrested person on bail, keep in view the time schedule as given in para 122 of the Police Regulations they can in most cases fix such a date in the bond for the appearance of the accused person in court which would be a date by which time the charge-sheet would be in court and there would be no necessity for giving another date to the accused for his appearance.

Prosecuting agency to inform the accused in advance if charge-sheet cannot be submitted by the date fixed.

To provide for those cases in which the time schedule had not been adhered to by the police in the matter of putting in the charge-sheet in court a rule should be made in the Police Regulations and the General Rules (Criminal) which would make it obligatory for the prosecuting agency to let a court know definitely the date by which the charge-sheet was to be submitted in court, and the court was thereafter to fix a date for the appearance of the accused accordingly. If for some reason this date was also not adhered to by the police, a duty should be cast on it to inform the accused in advance not to attend the court on the date which had been notified to him earlier and to let him know of the next date subsequently. This procedure would eliminate all that harassment which now obtains in the matter of fixing dates for appearance of accused persons in court after their release on bail.

CHAPTER X

SERVICE OF SUMMONS AND PROCESSES

Large scale corruption among process servers.

The investigations made by the Committee showed that there was a good deal of complaint regarding large scale corruption prevailing among process servers. Whenever a defendant or a judgment-debtor wants to delay proceedings and towards that end tries to evade service of process on him, he tries to bribe the process server so that he may make a suitable report in regard to service. Occassionally, a plaintiff, who wants to steal an *ex parte* decree, tries to gain his object by getting a report written by a process server that the summon had been delivered to the defendant but he refused to sign acknowledgment of such delivery. In many cases reports in respect of service are written by a process server without his taking the trouble to visit the village where the service had to be effected, the process server in such cases has the help of unscrupulous witnesses of whom there unfortunately is no dearth. The U. P. Judicial Reforms Committee observed at page 13 of their report this:

> "The process-server is sometimes not a straight-forward or efficient person and he leisurely moves to the beat with a determined effort to make as much out of the business as he can. Sometimes it is a question of bid between the two parties and whichever can exercise greater influence obtains a report suiting its need. If the plaintiff is more vigilant, he will obtain a report of service by refusal or affixation, even if the defendant is not available at his residence. If, on the other hand, the defendant can outwit the plaintiff, he may evade service in many ways and manage to get a report recorded about his not being available even though he has met the process server. We do not mean to say, however, that there are no scrupulous process servers. There are many and they do record correct report of service but we feel that all is not well with the majority of this class of government servants."

Inefficiency and dishonesty of process servers cause harassments and delays.

Investigations made by us also lead to the conclusion reached by the U. P. Judicial Reforms Committee. The result of inefficient and dishonest work by process servers is the cause of a good deal of delay in the progress of cases, apart from the other harassments which these cause to the litigants.

False reports of service lead to courts making unjustified *ex parte* decrees which in their wake bring about many unjustified harassments and much unnecessary expenditure to parties.

Difficulties of process servers.

It is, however, necessary to point out that sometimes process servers experience genuine difficulties in serving processes. In some districts there are long distances to be covered on foot and in the rainy season village paths are flooded and waterlogged. In alluvial areas service of summons sometimes becomes impossible in the rainy season. A process server does not, except to a very limited extent, get any travelling

allowance and, therefore, he cannot mostly avail himself of public conveyances even where such conveyances are available.

A large number of replies to the Questionnaire issued by the Committee and the oral evidence tendered before the Committee, pointed out that a more efficient machinery for service of summons and processes, if one could be devised, would certainly reduce delays and harassments appreciably. The Committee has found it difficult to suggest any drastic changes in the machinery of process serving as employed now. It was suggested by some that the summons and processes may be delivered to the parties themselves, if they undertake to effect the service, but the Committee is of the opinion that the service of summons and processes on the opposite party cannot be safely left in the hands of an interested party. The practice of issuing *dasti* summons to a party for service on his witnesses stands on a different footing from the service of summons or notice on the opposite party and therefore it could not be said that since *dasti* summons in case of witnesses was working satisfactorily, leaving service to the parties would also work satisfactorily.

Difficult to suggest an alternative agency.

Interested party cannot be entrusted to serve summons on opposite party.

The proposal for a more extensive use of the postal agency for service of various kinds of processes has received wide approval though some persons have expressed an apprehension that the greater use of postal agency for this purpose might shift corruption from the process serving agency to the postal agency. It is argued that a postal peon is as much susceptible to corruption as the process server with the additional disadvantage that he is not subject to the control and discipline of the court. In our opinion, with proper safeguards the post office can be used for service of summons as a supplement to the present system though it cannot be a complete or a better substitute for it.

Greater use of postal agency to supplement process-serving agency.

Rule 20-A of Order V of the Code of Civil Procedure enables the summons to be served by registered post either in lieu of, or in addition to, the usual manner of service where for any reason whatsoever the summon is returned unserved. An acknowledgment purporting to be signed by the defendant or his agent or an endorsement by a postal employee that the defendant or the agent refused to take the delivery may be deemed by the court issuing the summons to be *prima facie* proof of service. The Law Commission is of the view that this restriction that postal agency should be used only after the first attempt to effect service by ordinary process is unsuccessful should be removed and a summon by post should be issued simultaneously with the summons in the ordinary manner and the court should act on whichever return shows effective service.

Suggested amendments in C.P.C. for greater use of postal agency.

So far as our State is concerned, the Allahabad High Court has already added sub-rule (3) to rule 9 of Order V which gives a discretion to the court to issue summons to the defendant by registered post even in the first instance either in lieu of, or in addition to, the ordinary mode of service. We, however, suggest that summons should be sent by registered post acknowledgment due and the words "unless the cover . . . . in the ordinary course" in the concluding part of this sub-rule should be substituted by the words "an acknowledgment purporting to be signed by the defendant or the

agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery, may be deemed by the court issuing the summons to be *prima facie* proof of service", so as to bring it in line with rule 20-A of Order V. Amendment on the same line should be made in sub-rule (2) of rule 21 and also rule 25 of Order V as framed by Allahabad High Court. We recommend that courts should make frequent use of these provisions and summons should be sent by registered post in the first instance either at the discretion of the court or when a party requests for such service. This would lead to a considerable saving of time during the early stage of a litigation.

Problem of eradicating corruption from process serving agency.

How to root out corruption from the existing process serving agency and improve the tone of process servers presents a difficult problem. Several suggestions have been made from time to time but the malady has persisted. The U. P. Judicial Reforms Committee (1950-51) recommended that the register of processes should be examined regularly and disciplinary action taken against process servers who do not give a good account of themselves and that frequent change of beat might also prove effective. The Law Commission in their 14th report suggest that courts should exercise very strict supervision over the process serving establishment in order to reduce delays in the service of processes and if practicable, a responsible officer should make regular inspections of the work of process servers by paying surprise visits to the villages. They also recommended that the service conditions of process servers should be improved and provision made for the payment of travelling and other allowances to them.

Suggested remedies.

The Committee after giving a careful consideration to the problem suggests the following measures which, in its opinion, would go a long way in putting an effective check on the vagaries of the process serving agency and eliminating corruption from it.

Strength of process servers.

Strength of Process servers—Some kind of improvement in process serving, at any rate, in respect of cutting out of delays can be achieved by an augmentation of the strength of process-servers. It is, therefore, necessary to see to what extent augmentation was necessary.

Existing standards of out-turn of process servers.

Rule 123 General Rules (Civil) prescribes that the normal out-turn of a process server shall be 600 processes per year, an emergent process being reckoned as equal to three ordinary processes. Similarly, para 1061 of the Revenue Manual prescribes the minimum out-turn of a process server as 750 processes per year. These standards of out-turn of process-servers have been fixed for plains. For hilly districts lesser out-turns have been prescribed according to the nature of the terrain. The disparity in the out-turns of the process servers attached to Civil Courts and those attached to the revenue courts was mainly due to the fact that the process-servers of civil courts were mostly posted at district headquarters and they took the processes from there for service in different parts of the districts, while the process servers of the revenue courts were mostly attached to Tahsils and they served the processes within the territorial limits of a tahsil. This disparity has always existed and was likely to continue.

We have recommended elsewhere in this chapter certain improvements in the emoluments of the process servers. We have also recommended that they should get travelling allowances when they travel by rail or bus where such modes of travel were available. We have also recommended that a process-server should be given suitable bicycle allowance so that he may maintain a bicycle for his use while going out to serve processes within a certain radius. With these additional facilities and with the improved communications, it was clearly possible that process-servers would be able to make more services both of civil processes as also of revenue processes. The aforesaid standards for the minimum out-turn of process-servers were fixed when the amenities which the process-servers would now have, were not available. We are of the opinion, therefore, that with the additional amenities, process-servers on the Civil Side should serve at least 700 processes per year, while process-servers on the Revenue side should serve 900 processes a year.

More out-turn suggested with added amenities recommended.

In the opinion of the Committee the process-serving staff of the Civil Courts was not inadequate and that the staff as at present available should, with the added facilities, be able to fully cope with the volume of process serving work of the civil courts. The regular strength of the process servers on the Revenue side, however, was found to be short of actual requirements. The Revenue courts at the present moment were coping with the difficulty by utilising the services of the "revenue messengers", who now have no work as such after the abolition of the Zamindari. The Committee is of the opinion that the strength of process servers on the Revenue side should be adequately re-assessed at the departmental level and fixed according to the standard recommended by us. The deficiency in the numbers should be made up by absorbing to the process-servers' cadre such of the revenue messengers as would bring up the number to the required strength.

No deficiency in process serving staff on Civil side.

Deficiency exists on revenue side.

Strength to be reassessed and refixed.

Supervision and control—In order to root out corruption from the process serving agency it is very essential that presiding officers and the officer-in-charge of the Nazarat should exercise strict supervision and control over the process serving staff. The efficiency and integrity of process-servers should be judged by the percentage of processes actually served by them on the party concerned or on his relation or agent after obtaining an acknowledgment of such service. The report that a party to be served refused to accept the summon or that he accepted the summon but refused to sign its acknowledgment should not count as personal service for statistical purposes. There is already a circular issued by the High Court to this effect. The Assistant Nazirs should comply with the directions contained in this circular and maintain a correct record of the classification of service reports in the process register which should be regularly inspected by the Officer-in-charge of the Nazarat.

Punishment and rewards—Process-servers giving less than 75 per cent personal service should be suitably punished by fine or even by reduction of their salary unless they can satisfactorily account for the fall in their outturn. The percentage of successful service made by them should be taken into con-

Punishment and rewards.

sideration at the time of their confirmation and promotion. Process servers giving best returns of personal service should be rewarded by way of cash rewards or certificates of merit.

Attestation of the reports of service by affixation.

Attestation of the reports of service by affixation—Rule 139 of the General Rules (Civil) provides that if the summon is served by affixation on the outer door of a house an acknowledgment of this fact is to be taken from two respectable persons of the locality in a town or from headmen, lekhpals, chaukidars or neighbours in a village. We think that a service report that a party had accepted the summon but refused to sign its acknowledgment should also be attested by two respectable persons. The names and addresses of the witnesses attesting the report as also the boundaries of the house where the affixation of the summon had been made, should be clearly mentioned in the report of the process server. Besides headmen, lekhpals and chaukidars, the pradhan or a panch of Gaon Sabha or a panch of Nyaya Panchayat should also be included among the persons competent to attest such a report. We recommend that rule 139 of the General Rules (Civil) should be amended accordingly.

Verification of service reports on the spot.

Verification of service reports on the spot—It is also necessary that casual and surprise inspection and verification of the work of process-servers should be made on the spot. If necessary, posts of Assistant Nazirs may be increased for this purpose. The Assistant Nazirs as well as the Supervisor Qanungos, Naib Tahsildars and Tahsildars should make surprise inspections and verify on the spot some of the reports made by the process servers. If any process server is found to have made a false or fictitious report he should be severely punished.

Diary of process-servers.

Diary of process-servers—Under rule 134 of the General Rules (Civil) every process-server is required to maintain a diary in the prescribed form. In our opinion, the particulars prescribed by this rule are not sufficient for an effective check on the work done by a process-server. We think that the form of this diary may be prescribed on the lines of a bailiff's diary as kept in the Bombay State. On the first page of this diary the relevant rules relating to the service of summons and processes should be printed. The diary should clearly show the date on which the processes were handed over to a process-server along with the details of those processes, villagewise, under the signature of a Nazir. The process-server should be required to write his diary from day to day showing where he was on each date, what work he did and what processes he served or failed to serve. He should also note down in it the time of his arrival and departure from a particular village.

Change of beats.

Change of beats—A process server should not be allowed to stay too long in any particular beat. Normally there should be a change of beat once a year as prescribed by rule 130 of the General Rules (Civil).

Service conditions of process servers.

Service conditions of process servers—In order to improve the general tone of the process serving staff it is absolutely necessary to improve their service conditions. At present a process-server is not allowed any diet money or daily allowance like other government servants, when he is to remain away from the headquarters in the discharge of his duties. In

our opinion, it would be just if a process server who has to remain away from the headquarters for more than 15 days in a month is allowed a fixed diet money allowance of Rs.5 per month. Under para 24-A Chapter III, Financial Hand-book, Volume III, process-servers are debarred from drawing travelling allowance for journeys performed by road within their beats. They are, however, entitled to travelling allowance for railway journeys under the same paragraph as has been clarified in G. L. no. 8/VIC-14/50, dated the 1st April, 1950. Perhaps, it is expected that a process-server would cover his itinerary within his beat on foot. In these days most of the places are served by public buses. In our opinion a process-server should be allowed actual cost of travelling whether by rail or other public conveyances where they are available for covering distances above a prescribed minimum. Those process servers, who maintain their own bicycles, may be allowed an allowance of Rs.3 per month.

Diet money allowance, travelling and cycle allowance recommended.

Charging of fresh process fee if the first attempt remains unsuccessful—It has been suggested by many individuals and Bar Associations that process fee should be charged only once and if for some reason for which the blame cannot be fixed on the plaintiff the summon is not effectively served on the defendant, the plaintiff should not be required to pay a fresh process fee. We agree with this suggestion. In our opinion, it is neither proper nor just to ask a plaintiff to pay process fees again and again simply because a process server either due to negligence or inefficiency or dishonesty fails to serve the summon effectively on the defendant. We, therefore, recommend that a plaintiff should be called upon to pay the process fee only once unless the reason for not effecting the service arises out of the wrong particulars given by the plaintiff of the person to be served or some such similar cause. If it is impressed upon the process-servers that it is their duty to serve the summons effectively and, in any case, the plaintiff would not have to bear the process fee again and again, they might feel greater responsibility in this matter and there would be less opportunity for corruption. We, therefore, recommend that necessary amendment be made in the General Rules (Civil) to give effect to this suggestion.

No fresh process fee to be charged if service not effected due to inefficiency or dishonesty of process server.

Second and subsequent attempt for service if the first remains unsuccessful—Rule 140 of the General Rules (Civil) provides that when a process is received back with a service report as contemplated by Order V rule 17 it should be promptly laid before the court for orders under Order V rule 19 and that a fresh service should ordinarily be ordered if there is sufficient time for such service to be effected. The investigations made by the Committee show that either due to overwork or oversight or inability to contact the plaintiff, the provisions of this rule are seldom complied with by courts with the result that the duration of a case is prolonged. According to the recommendations made by us above, the plaintiff should not be required to pay fresh process-fee in such cases. If the provisions of this rule are promptly complied with by the Nazir and the clerk of the court in most cases a second and even a third attempt at service of summons can be made before the date fixed in the

Second attempt for service if first remains unsuccessful.

case and this would appreciably cut out delay in the early stages of a case.

It has also been suggested that the summon or the process which is issued a second time or an urgent process issued on payment of enhanced process-fee should be printed on a distinctive coloured paper so as to draw the attention of all concerned as needing expeditious handling. We think it is a useful suggestion which should be given a trial.

Summons and processes in Kumaun Judgeship.

Summons and processes in Kumaun Judgeship—In Kumaun Judgeship there is no separate process serving staff under the control of the District Judge. Summons and notices in civil cases are served through the process serving staff of the Collectorate over which the civil courts have no administrative control. The process-servers do not pay sufficient attention to the summons issued by civil courts with the result that many cases have to be adjourned several times for want of proper service. It seems very necessary that this system should be changed and a separate process serving staff should be attached to the civil courts which would be under the administrative control of the District Judge. This would not involve much extra expenditure for some process-servers can easily be taken away from the staff of the Collectorate and transferred under the District Judge.

Service of summons in Sessions trials.

Service of summons in Sessions trials—The Committee received complaints from a number of Sessions Judges that often sessions trials had to be adjourned due to non-service of summons on witnesses. Sometimes the fault lies with the office of the Committing Magistrate in not issuing summons promptly; sometimes the police fails to effect service and return the summons to the court concerned in time. The U. P. Judicial Reforms Committee while examining this matter observed at page 49 of its report:

> ". . . . it would certainly be conducive to efficiency and expedition of work if processes issued both from the courts of Magistrates as also of Sessions Judges are sent direct to the police stations by registered post, acknowledgment due, and the processes after service are also returned direct to the courts concerned by registered post, acknowledgment due. This may mean some additional work for the sessions clerk in the sessions court, but it may be obviated to some extent if the committing magistrate sends the summons for witnesses duly filled in leaving the space for the date blank to be filled in by the sessions clerk."

We find ourselves in agreement with the suggestion which would, in our opinion, considerably eliminate delay and adjournment in sessions cases due to non-service of summons on witnesses.

Scrutiny of Register of summons kept at police stations.

These summons and processes received at the police station from courts are required to be entered in a register. The dates of receipt and return of these processes are also entered in the register. There should be frequent checking of this register by superior police officers and if there is any delay in the service of summons and their return to the court concerned, suitable action should be taken against the person at fault. Necessary amendments should be made in General Rules (Criminal) and the Police Regulations to give effect to this recommendation of ours.

CHAPTER XI

INSPECTION OF RECORDS AND SUPPLY OF INFORMATION

There does not appear to be much of corruption in making inspection of records. The rules provide ample facilities to parties, their counsel and pairokars for inspecting the records of civil, criminal and revenue cases on payment of prescribed fees which are not high in any case. On the date of hearing the record of a civil, criminal or a revenue case can be inspected by a party or his pleader with the permission of the presiding officer without payment of any fee. Whatever tipping exists in this matter is due to the fact that the parties or their counsel want to inspect the records at their convenience and not within the prescribed hours.

Tipping is indulged in to seek convenience.

The inspection of records is not usually allowed throughout the working hours. Rule 221 of General Rules (Civil) provides that each District Judge shall specify the hours during which inspection will be allowed. Usually these hours are from 12 noon to 3 p.m. Under rule 139 of the General Rules (Criminal) a record in a Magistrate's court or record room can be inspected on any court day within the first four working hours. Under para 1281 of the Revenue Manual the records of the revenue cases are open to inspection for the first four hours on all working days. Very often the pleaders of the parties are busy during these hours and they do not find it convenient to inspect records during these prescribed hours. The result is that the parties tip the officials who permit them to inspect the record at other hours at the convenience of their lawyers and their clerks.

Existing rules of inspection of records examined.

The Committee had incorporated question no. 26 in the Questionnaire issued by it in which opinion was invited whether or not inspection of records should be allowed throughout the working hours. The official opinion generally favours that there should be some fixed hours during which inspection of records should be allowed and not throughout the working hours. But the non-official opinon as represented by the Bar Associations, individual members of the Bar, public men, District Anti-Corruption Committees and Local Bodies is generally in favour of allowing inspection of records throughout the working hours.

Whether inspection to be allowed throughout working hours.

It has been widely suggested that there should be a Central Inspection Office in the charge of a senior official known for integrity who should be assisted by other staff, according to local needs and that inspection of records may be allowed in this central office throughout the working hours in the presence and under the supervision of the appointed official.

Suggestion for a centralised inspection room.

So far as civil courts are concerned, rule 221 of the General Rules (Civil) provides that each District Judge shall allot a special room where records shall be inspected and shall specify the hours during which inspection will be allowed. This rule

Existing practice.

possibly contemplates a central inspection room for inspection of records of all Civil Courts. The general practice, however, is that it is only with regard to the inspection of the records consigned to the record room that such a special room is allotted for inspection purposes. The records which are in the offices of various courts are usually allowed to be inspected by the parties and their pleaders in the office of each court under the supervision of the Munsarim or the clerk who is in charge of the record.

Inspection to be allowed throughout working hours.

If corruption at this source is to be checked, it appears necessary to allow inspection of records throughout the working hours even though it might mean some inconvenience to the ministerial staff of the courts subordinate. This inconvenience could be minimised if a central inspection room in the charge of a senior official as suggested above is provided. This official could send for the record sought to be inspected from various court offices or the record room and allow their inspection in his presence throughout the working hours. This scheme of centralised inspection room would, however, present one difficulty. It would increase the movement of files. Every clerk in charge of a record shall have to check the record before sending it to the inspection room and again after it has been received back which would increase his work. If this checking is not done, it would be difficult to place responsibility in case of loss of any document from the record. It is also apprehended that delays would be caused in sending the record to the inspection room. There would also be danger of tampering of records. The Committee, after careful consideration of the matter, is of the opinion that there should be no centralised inspection room but that inspection should be allowed as at present and it should be permitted throughout the working hours.

Difficulties in having a centralised inspection room. Hence not recommended.

Enquiry Offices—Under the Scheme of Reorganisation enforced in the Collectorates provision has been made for enquiry offices. In order to assess the usefulness of these offices and to judge the advisability of their extension to civil courts the Committee had incorporated a question in the Questionnaire issued by it inviting public opinion on this matter. The replies received to this question show that the opinion is divided on this matter. A majority of District Magistrates and other officers are of the view that the enquiry offices set up under the Reorganisation Scheme have proved useful and convenient to the litigant public and they are of the opinion that such offices should also be established in civil courts. A few District Magistrates have stated that enquiry offices have not proved of much help to the public so far as the business of the court is concerned but they have been of great help to them in those cases where they go to the Collectorates for other work such as grant of licenses, permits and renewal of firearms licenses, etc. It has been generally suggested that in order to make enquiry offices more useful the enquiry clerk should be provided with a push-button type inter-communication telephone with connections to various other sections of the Collectorate. We are, however, of the opinion that this expenditure was not really justified having in mind the corresponding gain.

Divided opinon regarding usefulness of Enquiry Offices in Collectorate.

Their usefulness in Civil Courts doubted.

A majority of District Judges have expressed the opinion that enquiry offices will not be useful in civil courts. It is said that even if these offices prove of some help it would not be commensurate with the expenditure involved. It is also pointed out that under rule 224 of the General Rules (Civil) any person desiring to ascertain the serial number and date of institution of any suit or other registered particulars respecting a suit or any other proceeding therein, or of any judicial proceeding can obtain such information by presenting a written application or sending such application by post. A court fee label of 25 n. P. only is required to be affixed on such an application. Again under rule 225 it is open to a party to obtain in pending cases certain information by means of written questions and answers on a prescribed form on payment of 13 n. P. for every question asked. Similar provision about criminal cases is found in rule 141 of the General Rules (Criminal) and about revenue cases in paras 1290 and 1290-A of the Revenue Manual.

Existing rules regarding furnishing of information examined.

Enquiry offices in civil courts recommended in important judgeships on experimental basis.

Experience has, however, shown that very little use is made by the litigant public of the above rules for eliciting information. Moreover, the information that can be furnished under these rules is of a very limited nature. Often the litigant public seek information which is not covered by these rules and for that purpose they have to tip the readers or other officials of the court. In such cases the enquiry offices may serve some useful purpose. We, therefore, suggest that 'enquiry offices' may be tried in some important judgeships as an experimental measure and final decision taken in the light of experience gained.

Conditions for success of enquiry offices.

The success of an enquiry office would largely depend on the proper selection of the enquiry clerk. It is necessary that an official who has got reputation for integrity and has a sympathetic outlook and who is of cheerful disposition and amiable temperament is selected for this post for which a special allowance may be provided. Wherever possible the enquiry clerk should be provided with a telephone so that he could attend to enquiries on telephone also. The enquiry clerk should have authority to obtain necessary information on enquiry slips from courts and offices and supply such information to the litigant public. He can keep a stock of non-saleable forms with him which he can supply to litigants who are in need of such forms. The enquiry offices can be useful in guiding the public and in preventing the litigants from coming into direct contact with inferior and ministerial staff of the court. Applications for information received by post may also be attended to by the enquiry clerk who may send their replies by post. Appropriate rules for regulating business of enquiry offices and the duties and powers of the official in charge of these offices can and should be made in case Government is of opinion that a trial should be given to enquiry offices in civil courts as well.

CHAPTER XII

ISSUE OF CERTIFIED COPIES

Delays and corruption exist in Copying departments.

The investigations made by the Committee show that there are delays and corruption in the copying departments of the courts subordinate. The usual complaint is that certified copies are not issued expeditiously. As the parties are anxious to obtain these without delay, they have to tip the ministerial staff for this purpose. The delay is usually ascribed to shortage of hands in the copying department to cope with the work in hand. It was suggested before the Committee that if copyists are engaged on piece work basis it would lead to expedition and minimise corruption. Hence the Committee had incorporated a question (Q. no. 13) in the Questionnaire issued by it in the following terms:

Suggestion for employment of copyists on piece work basis.

> Will it minimise corruption and lead to expedition if—
>
> (*a*) over and above the regularly paid staff of the copying department some copyists are engaged on piece work basis;
>
> (*b*) the existing system of engaging paid copyists is superseded and instead all copyists are engaged on piece work basis; and
>
> (*c*) the staff of the copying department are given extra remuneration for extra work done after working hours or on holidays?

The replies received by the Committee show that most of the District Judges and District Magistrates were opposed to the employment of copyists on piece work basis as suggested in parts (*a*) and (*b*) of the above question. The reasons given were:

Reasons against this suggestion.

(1) It would not be possible to exercise proper control over copyists engaged on piece work basis.

(2) It would not be desirable to entrust the custody of judicial records to them.

(3) If important papers are lost it would be difficult to fix responsibility for the loss on any particular person and to award adequate punishment.

(4) Tampering of records also could not effectively be guarded against.

The replies received regarding suggestion contained in part (*c*) of the above question show that the opinion on this point was divided but a slight majority seemed to be in favour of the proposal. It has been suggested that extra remuneration be allowed to a copyist in respect of that work only which was above the prescribed standard of outturn.

Suggestion not acceptable to the Committee but trial to be given in a limited and modified form.

The Committee after carefully considering the matter placed before it, is of the opinion that the employment of the copyist on piece work basis is fraught with danger but an experiment may be made by paying extra remuneration to fast and accurate typists or copyists who devote extra time either on court days or on holidays and put in work of more than 6000 type-written

words or 4,000 handwritten words. Additional work done may be paid for at a rate to be fixed.

There can be no doubt that corruption exists in the copying department, though the nature and extent of corruption might vary from place to place. It is said that there is less of delay in the issue of certified copies in the collectorates after their reorganization. This system is not, however, feasible to be adopted in Civil courts because the number of copyists and typewriting machines that would be needed would be enormous. Corruption exists.

Delay and consequent harassment are largely due to one of the following causes: Reasons for delays and harassment.

(*a*) *not telling the applicant immediately what the defects in his application are*—Rule 254 (*b*) of the General Rules (Civil) provides that at the time of presentation of an application for copy the Munsarim shall tell the applicant to return the same day at 4 p.m. and on his return shall inform him whether his application has been granted and in the case of its being disallowed, why it has been disallowed. We think that if this rule is slightly amended so as to give an opportunity to an applicant to remove the defects from his application before it is disallowed and it is made incumbent on the Munsarim to inform the applicant on the same day by 4 p.m. about the defects, if any, existing in his application and if this rule is followed strictly, much of the uncertainty and worry of the applicants would disappear. Notices embodying the text of this amended Rule 254 should be pasted at the door of the Copying Department and also at the door of the office of Sadar Munsarim so that those who apply for copies may know what they are entitled to under the rules. Amendment suggested in Rule 254(*b*) General Rules (Civil).

(*b*) *Giving a wrong estimate of number of words and on that ground declaring that the copying fee, as filed, is insufficient*—Wrong estimates are often made due to pressure of work and also due to lack of a sense of responsibility in this matter as in many other matters connected with the copying department. Better supervision and control by the Head Copyists and the officer-in-charge of the copying department can eliminate to a large extent this defect. A few sample checking of estimates by the officer-in-charge can make all concerned careful and alert on this score. If the estimates are found incorrect the person making it should be suitably dealt with. The officer-in-charge should devote at least half an hour daily to the work of supervision of copying department. Giving wrong estimates of copying fee.

(*c*) *Work falling into arrears*—When the work falls into arrears the officials of the copying department get greater opportunity for making illegal gain for them; they can with a certain amount of safety pick and choose between applicants. The work is not uniform throughout the year and so it is bound to fall into arrears during the rush season. Work falling in arrears.

Provision for employing extra copyists to cope with extra work.

It is essential that there should be a kind of fool-proof arrangement whereby it could be possible for District Judges to employ additional hands in the copying department to cope with extra demand for copies. Under rule 269 of the General Rules (Civil), District Judges are required to report to the High Court whenever an increase in the establishment of copying department was necessary though in urgent cases the District Judges can employ extra copyists and then report to the High Court.

Under G. O. no. 109/VII—407, dated April 29, 1952, the District Judges were empowered to entertain extra temporary copyists in their copying department at a cost not exceeding Rs.600 in a year (excluding dearness allowance) in each judgeship in case all the copyists were fully engaged and additional staff was necessary to cope with the work to ensure speedy disposal. The G. O. further enjoined that this additional expenditure should, as far as possible, be met by effecting savings on non-essential items in their sanctioned budget allotments.

Suitable budget allotments for this purpose recommended.

Some difficulty appears to have been faced by the Judges in making use of this power. There was also, it appears, some kind of misapprehension that additional expenditure incurred on employing additional hands in the copying department would only be justified if savings could be made. It was agreed on all hands that every effort should be made to save by cutting out non-essential items of expenditure from budget but even so, in relation to employing additional hands either in the copying department or in any other department where genuine need was felt in the interest of efficiency or despatch, it should not be made dependent in any way on savings being effected in the budget allotments.

In our opinion a sum of Rs.600 was not sufficient as a kind of maximum for being drawn up in case there was necessity to add to the staff of the copying department. In our opinion the minimum should be Rs.1,200.

The aforementioned fund should be placed at the disposal of the District Judges every year for the purpose of engaging a certain number of copyists whenever extra hands are deemed necessary due to extra pressure of work. There should be a reserve fund in the hands of the High Court available for use in cases of unforeseen need. There are similar provisions in the Revenue Manual para 1343 for the revenue courts and we have been told that this has worked satisfactorily in respect of revenue courts. There is no reason why this should not work satisfactorily with regard to civil courts also.

Work should be deemed to fall in arrears if ordinary copies cannot be supplied within a week and urgent copies within 24 hours.

Lack of sufficient number of typewriters.

(*d*) *Lack of sufficient number of typewriters*—Whenever an additional court of a Civil Judge or a Civil and Sessions Judge or an Additional District Judge is created one typewriter is requisitioned from the copying depart-

ment. Many such additional courts had to be created during recent years. It also happens that sometimes the typewriter of a court gets out of order, and this is replaced immediately by one from the copying section, till it can be repaired. The result is that the work in copying department suffers. Sufficient number of typewriters should be provided for the copying department making adequate allowance for breakdowns and demands which are made for and from courts.

Suitable number of typewriters to be provided for.

The procedure for getting extra-typewriters for copying department should be simplified so that there may not be any delay in getting the sanction for the purchase of typewriters.

(*e*) *Copies not issued in strict priority*—There is no uniform practice as to how the priority should be determined after a "break number". Certain head copyists interpret the rule of priority in the sense that the application for copy would take its priority only from the date on which the defect, pointed out in the order breaking the number, is removed. The proper interpretation should be that for purposes of priority the date of application, and not the date of the removal of hinderance in the issue of copy, should be the determining factor, once the hinderance is removed within a reasonable time or within the time allowed. This should be clarified in rules.

Rule of prio

(*f*) Sometimes the staff of the copying department breaks the order of priority prescribed by rule 261 on a slight pretext. It is provided that any departure from this rule should at once be reported to the Judge with the reasons for such departure. If the Presiding Officer keeps a vigilant eye and carefully scrutinises the reasons for breaking the order of priority he can effectively check any malpractices on this score.

Breaking of order of priority on slight pretext.

(*g*) Rule 260 provides that when a copy is ready for delivery notice thereof in form no. 30 shall forthwith be placed on the notice board and the date of the posting of the notice shall also be endorsed upon the first sheet of the copy. Sometimes it happens that, though a copy is actually prepared at a later date, it is shown on the notice board of the previous date and that date is also endorsed on the first sheet of the copy. If the Officer Incharge and the Presiding Officers frequently pay surprise visits and check the notice board of the copying department such malpractices on the part of the staff can be effectively curbed.

Another major cause of corruption which is not connected with harassment or delay on the part of the court officials is the anxiety on the part of the parties or their counsel to obtain copies of the depositions or other matter, immediately, which it may not be possible to get in regular course. In cases which are heard from day-to-day the counsel for the parties require copies, on the same day, of the statements of witnesses recorded in order to prepare their arguments. Surreptitious copies are, therefore, supplied after the presiding officer has left.

Another major cause of corruption.

Some amount of pressure on the copying department would be relieved if copies of evidence could be supplied to parties who wanted these as and when such evidence was taken down on a typewriter. This can be possible if the presiding officers are supplied with Hindi typewriters and typists and they are permitted to dictate evidence. As many carbon copies of statements as are needed by the parties, can be prepared when the evidence is typed out to the dictation of the Judge in court. We have at an earlier place recommended an amendment in Order 18 rule 5 of the Code of Civil Procedure with the same object.

A duty should be cast on presiding officers to supply immediately copies of interim orders and injunctions passed by them, to a party who wants to have them on payment of prescribed fee.

To sum up, the Committee's recommendations are as follows:

The engagement of copyists on piece work basis is not approved.

The system of obtaining copies adopted in Collectorates after reorganisation, might eliminate some delay and consequent harassment but it cannot be adopted in Civil Courts because the number of copyists and typewriting machines which would be needed would be enormous.

The existing system may be retained with the following modifications:

(i) There should be greater supervision by the head copyist so that correct report regarding copying fee needed is submitted. The provisions of Rule 254 *(b)*, General Rules (Civil) should be amended and followed strictly. Notices embodying the text of Rule 254, General Rules (Civil) should be hung both at the door of the copying department and at the door of the office of Sadar Munsarim so that those who apply for copies may know to what they are entitled under the rules.

(ii) There should be greater supervision by the officer in charge of the copying department and copies should be issued strictly according to priority.

The officer-in-charge, copying department, should devote at least half an hour every day to supervision work.

(iii) The District Judges and the District Magistrates should be required to employ extra copyists whenever the work falls into arrears, that is to say, whenever ordinary copies are not being issued within a week. Rule 269 of the General Rules (Civil) should be suitably amended. Necessary budget allotment should be placed at the disposal of District Judges for this purpose.

(iv) More typewriters should be supplied to the copying department.

(v) Each presiding officer should be supplied with a Hindi typewriter and a Hindi typist for dictating evidence in court.

(vi) Extra remuneration should be paid to fast and accurate typists or copyists who devote extra time to their work and put in more than the prescribed quota.

CHAPTER XIII

EXECUTION OF DECREES

Corruption and harassment in execution department.

The execution department of the courts subordinate is another field which offers many opportunities for corruption and harassment. The general complaint against the system of execution of decrees of civil courts is that in a large number of cases the decree-holders who obtain, after much trouble and expense, decrees for payment of money or for delivery of specific property or for other relief, are not able to obtain full or even partial satisfaction of their decrees within a reasonable time and sometimes never. As far back as 1872 it was observed by the Privy Council in the *Maharaja Darbhanga's* case that the difficulties of a litigant in India begin when he has obtained a decree. On the one hand, the judgment-debtor tries to harass the decree-holder and obstruct the execution of the decree as much as he can—and the law affords him ample scope to do so—on the other hand, the agencies through which the court executes its decrees and which are expected to help the decree-holder in realising the fruit of his decree, try to fleece him as much as possible. There are cases in which decrees become time-barred without the decree-holder being able to realise the fruits of his decree and expenses involved in obtaining it, to any extent.

The Committee carefully examined the rules of procedure which provided opportunities for delays and harassment in the matter of execution of decrees. While reviewing the provisions of the Code of Civil Procedure in general we suggested some amendments in the existing procedure relating to execution of decree with a view to cut down delays and harassments. We propose to further examine these provisions with the same object.

Suggested amendments in C. P. C. to cut down delays in execution.

Often a judgment-debtor in order to delay the execution proceedings files a frivolous objection under section 47, Civil Procedure Code and allows it to be dismissed for default and then he takes the same objection again. Sometimes a judgment-debtor instead of raising all his points in one objection filed under section 47, Civil Procedure Code raises objections one after another in order to prolong the proceedings. The question arises whether in such cases the subsequent objection should be barred on the principles of *res judicata*. The Privy Council in *Ram Kripal* v. *Rup Kuar*, (I.L.R. 6 All. 269) held that when a question had been raised in an execution proceeding and decided, the decision, even if erroneous, is binding on the parties and cannot be re-opened in the subsequent proceedings. The Supreme Court further applied the principle of constructive *res judicata* to execution proceedings in the case of *Mohan Lal Goenka* v. *Benoy Kishan Mukherjee* (A.I.R. 1953 S.C. 65). In spite of these decisions a good deal of time of courts is wasted in entertaining successive objections filed by judgment-debtors in execution proceedings. In order to obviate this difficulty,

the Law Commission recommended that statutory effect should be given to these judicial decisions which apply the principle of direct and constructive *res judicata* to execution proceedings by incorporating Explanations to section 47, Civil Procedure Code on the lines of section 11, Civil Procedure Code. We agree with this recommendation of the Law Commission and propose the amendment of section 47, Civil Procedure Code on the lines recommended by the Law Commission.

No appeals against certain orders passed in execution.

It has been suggested that orders passed in execution proceedings should be non-appealable if they deal with pleas of payment up to a certain amount, say rupees five hundred. The Law Commission recommended that in the case of a money decree passed in a regular suit, orders passed by execution court should be made non-appealable if they deal only with pleas of payment of an amount within the limits of the small cause jurisdiction of the court executing the decree. As an illustration, they pointed out that if a money decree for Rs.2,000 passed in a regular suit was executed in the court of a Judge whose small cause jurisdiction extended up to Rs.500 and a plea was raised by the judgment-debtor that he had paid Rs.400 towards the decretal amount, the decision of the Judge on this point should be non-appealable. We agree with this recommendation of the Law Commission which will, in our opinion, help to some extent in expediting execution proceedings. In order to give effect to this recommendation necessary amendment should be made in section 47, Civil Procedure Code.

Following the Civil Justice Committee, the Law Commission proposed that in the case of orders passed in execution of money decrees, restrictions should be placed on the right of appeal by requiring the appellant-judgment-debtor to deposit or at least give security for the decretal amount as a condition precedent to the admission of an appeal. The Committee carefully considered this recommendation of the Law Commission. In our opinion, so long as the filing of an appeal against an order passed in execution proceedings does not interfere with the progress of the execution proceedings, there appeared no good reason to place such a restriction on the right of appeal. If the judgment-debtor wishes or attempts to obtain a stay of the execution proceedings in contemplation of filing his appeal he would have to approach the execution court for this purpose by moving an application under Order 21, rule 26. Under sub-rule (3) of this rule, as amended by Allahabad High Court, it is necessary for the court before making an order to stay execution to require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Execution proceedings not to be stayed without proper safeguards pending an appeal.

After filing his appeal against the order passed in execution proceedings or against the original decree which is under execution, the judgment-debtor has to make an application to the appellate court under Order 41, rule 5 to stay further execution proceedings. Sub-rule (3) of this rule provides that the appellate court shall not order stay of execution unless it is satisfied that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him. In our opinion, these provisions of law are sufficient to safeguard the interest of the decree-holder and to put a curb on the judgment-debtor who wants to delay the

execution proceedings by filing unnecessary appeals. Much control could be exercised on the dilatory tactics of judgment-debtors if all courts are vigilant and make judicious use of the provisions of the Code. In this connection the Law Commission observed:

> "It has come to our notice that very often the imperative requirements of the rules are overlooked by the courts. If the power to ask for security is properly exercised and if in proper cases the security is made to take the form of a money deposit in court, there will be little room for complaint against the operation of this provision."

There is one more matter which affects the progress of an execution and that relates to orders passed by a court under Order 39, rule 1. This rule, as it stands, gives discretion to a court in respect of certain pending suits to issue a temporary injunction restraining the sale of a property in execution of a decree. Sometimes, a person whose claim under Order 21, rule 58 is dismissed by the execution court files a regular suit under the provisions of Order 21, rule 63 in a competent court and tries to obtain a temporary injuction from that court to stay the execution sale. In this connection the Civil Justice Committee observed:

> ". . . . an injunction under that rule practically negatives the right of the decree-holder in most cases. The court that can best know whether the execution should be stopped or not is the executing court. A person who has filed a suit can very well apply to the court executing the decree to stay its hand pending the result of the suit, if he is a party to the decree. He should not be allowed to ask a court which knows nothing and can only act upon affidavits till a very elaborate enquiry is held, to stay the hands of another court often superior in grade".

Amendment suggested in O. 39, r. 1(1) (*a*).

The Civil Justice Committee recommended that this power given to a court under Order 39 rule 1 to stay execution sale by means of a temporary injunction should be taken away. Acting on this recommendation, Allahabad High Court had amended this rule so as to take away this power. But in 1944 Allahabad High Court again amended this rule so as to restore that power. The Law Commission after fully considering the matter has recommended that the court's power to order stay of execution sale by issuing a temporary injunction should be taken away by omitting the words "or wrongfully sold in execution of a decree" from clause (*a*) of sub-rule (1) of rule 1 of Order 39. We find ourselves in respectful agreement with this recommendation of the Law Commission. This would help in eliminating delay in execution proceedings in many cases.

Centralised execution.

We now come to some other matters relating to the execution of decrees. Under section 38 of the Code of Civil Procedure every court which passes a decree is competent to execute it. Experience has shown that some presiding officers either due to inexperience or want of adequate sense of responsibility do not take proper interest in the progress of an execution and leave it mostly in the hands of their clerks. Some junior and

inexperienced officers cannot keep proper control over the execution clerk and the amin charged with the execution of decrees who indulge in malpractices. So a suggestion was put forward before the Committee that there should be a "centralised execution court" for a particular local area. The Committee incorporated question no. 32 in its Questionnaire relating to this matter. From the replies received to the Questionnaire and the oral evidence of the witnesses examined, it is evident that a large majority of opinion was in favour of the proposal of setting up a centralised execution court for a particular area. The question, however, is about the constitution of this centralised execution court. One proposal is that a senior officer of the rank of a Civil Judge should hold charge of this centralised execution court and he should execute all the decrees whether passed by the Munsifs or Civil Judges. Appeals against his orders in execution proceedings shall lie to the District Judge if the value of the decree is below Rs.10,000 and to the High Court if the value of the decree is more than Rs.10,000. This was likely to increase the appellate work of the District Judges. Another proposal was that, where there are several courts of the same grade, the seniormost of the officers should be entrusted with the work of execution. In other words, if there are more than one Civil Judge at a particular place, then the seniormost may be assigned the work of execution. Where there are several Munsifs the seniormost of them may be made responsible for the execution of decrees. Obviously it would not be possible under the existing law nor would it be desirable, that a Munsif should execute the decree passed by a Civil Judge. The Law Commission favoured the second proposal.

Two suggested modes of centralised execution.

Advantages of centralised execution.

The advantages which are likely to accrue from a centralised execution court may be mentioned as follows:

1. A senior officer being in charge of the execution work can be expected to exercise better supervision and control over the execution clerk and the amin and also over the tactics of the parties.

2. Amins can be placed directly under the control of such an officer who can regularly inspect their work.

3. In civil courts only one clerk is provided to an additional court of a Munsif or a Civil Judge and that clerk is in charge of the entire work including regular suits, miscellaneous cases and execution applications. Naturally a single clerk cannot do this entire work satisfactorily. If the entire work of execution is centralised, one or two execution clerks, according to the volume of the work, can be provided for this work.

4. The presiding officer of this centralised execution court can be required to devote a part of his time daily to execution work which would be conducive to greater despatch of execution proceedings.

Those who are against this proposal of a centralised execution court have advanced the following reasons in support of their view:

Arguments against centralised execution.

1. The present system under which every court executes its own decree is working satisfactorily. Every officer gains experience in execution work under this system.

2. The proposed scheme of a centralised execution court was tried at a few places but was not found successful.

3. Execution work has decreased considerably and a centralised execution court is unnecessary. It would not lead to any economy. On the other hand, it might mean more work for the staff. The execution clerks shall have to run about to various courts to verify the particulars given in the execution applications from register no. 3 of those courts.

4. The proposal may not be helpful in hilly regions where there are scattered areas and long distances.

5. The court which passes the decree is generally in a better position to know if any party is interested in intentionally delaying the execution and it can take necessary precautions to thwart it.

In the opinion of the Committee the arguments or reasons against having a centralised execution court do not appear to be very weighty—the advantages of centralised execution definitely outweigh the disadvantages pointed out. This suggestion of having a centralised execution court should, in our opinion, be given an adequate trial.

Centralised execution recommended for bigger districts.

We are further of the opinion that this centralised execution court should be on the lines recommended by the Law Commission, namely, that if there are more than one Munsif's court and more than one Civil Judge's court then execution work should be allotted to the seniormost Munsif in respect of Munsif's courts' execution and to the seniormost Civil Judge in the case of the execution of the decrees passed by the courts of Civil Judges. It would be necessary to relieve the respective officers from original work so that they may give proper attention and care to execution matters. If the Civil Judge or the Munsif who has been burdened with the entire execution work of a particular jurisdiction is not given respite from other work then it is unlikely that he would devote that care and attention which execution cases require and for giving which we have made aforementioned recommendation.

Relief to officers doing execution work from regular work.

It may be necessary to amend section 38, Civil Procedure Code if the proposal for a centralised execution court is accepted.

Obviously the above scheme of centralised execution can be given a trial in some bigger districts only where there are several courts of the same grade. In other districts where there is a single court of Civil Judge or Munsif, the execution work

Other courts doing execution work also to be given some relief from regular work for better supervision and control.

shall have to be done by that very court. In such cases the Presiding Officer should be given some relief from the load of regular work in order to be able to devote more attention to execution matters and to be able to keep better control over Amins.

Office reports on execution applications.

The presiding officers should, among other things, see that the office reports on the execution applications do not only correctly point out the defects, if any, but should also mention how the defects could be removed, as required by rule 166 of the General Rules (Civil).

Agencies through which decrees are executed.

The agency through which a court executes its decree is in most cases the amin except in those districts which were formerly under the jurisdiction of erstwhile Chief Court of Avadh where decrees up to a certain valuation are executed by process-serves and decrees above that valuation are executed through nazirs. The warrants of arrest against the judgment-debtors in execution of civil decrees are executed everywhere through process-servers.

There is a general complaint that these agencies through which the decrees are executed are mostly corrupt and they do not help the decree-holders in getting satisfaction of their decrees unless their palms are greased, and the complaint is not without substance. We do not mean to suggest that there are no honest persons among the amins, nazirs and process-servers. Our investigations, however, show that a majority of them indulge in corrupt practices when charged with the work of execution of decrees.

Problem of eradicating corruption from the executing agencies.

To put a curb on the malpractices on the part of the amins and the process-servers entrusted with the task of executing the decrees present a difficult problem. It has been alleged by a large number of persons that the existing system of execution of decrees through Nazirs and process-servers in Avadh districts is very unsatisfactory and leads to corruption. We are also of the opinion that this system should be stopped immediately and amins should be appointed in these districts also for execution of civil court decrees. It has not, however, been possible to suggest a more satisfactory agency which may replace the amin for the work of execution of decrees.

Amins to be appointed in Avadh districts.

Strict supervision and control over Amins necessary to root out corruption.

In order to check malpractices on the part of amins it is necessary to have a strict control over their work. Under rule 527(*b*) of the General Rules (Civil) the District Judge has been authorised to appoint a judicial officer to be in charge of the work of the amins. The circle of every amin is divided into beats and there are fixed dates for the amin to work in those beats. Under rule 531 an amin is required to submit his programme of tour to the courts whose order he executes and also to the officer-in-charge of is whork. Rule 532 requires that an amin shall inform the decree-holder or his pleader by registered post or otherwise, within sufficient time, of the date on which he proposes to be at a certain spot to make an attachment or deliver property so as to enable the party concerned or his representative to attend on that date. Under rule 535 an amin is required to submit a monthly statement of his work in which

he has to offer an explanation in respect of each process in which he had claimed extension of time or which was executed and returned by him after the date fixed or which was returned unexecuted. The officer-in-charge is required under rule 536 to examine these monthly statements with the help of a map of the beats and satisfy himself that there has been no avoidable delay in executing a process and that the amin in his tour has taken the shortest time. In our opinion, these rules lay down comprehensive directions regarding supervision over the work of the amins. If presiding officers of the courts and the officer-in-charge of amins' work scrupulously follow the directions contained in the rules and frequently scrutinise the diaries and the statements submitted by the amins a good deal of corruption could be eliminated.

Complaints against amins to be promptly inquired into.

A complaint of corruption made against an amin should be enquired into promptly and if it is found to be correct he should be given deterrent punishment.

CHAPTER XIV

REFUND OF MONEY DEPOSITED IN COURT AND RETURN OF CASE PROPERTY

Obtaining of refund voucher from a court and then to realise its money from the treasury or State Bank is a cumbersome process. There is a complaint that applications for refund of money are inordinately delayed and it affords opportunities for corruption. It is only when the parties grease the palms of subordinate officials that they get refund vouchers within a reasonable time. In order to eliminate corruption in this matter, the U. P. Judicial Reforms Committee (1950-51) had suggested that a register should be opened in every court in which applications for refund should be entered with necessary columns and that the presiding officer should insist that the report from the record room about the title of the applicant and from the Nazarat about the availability of the money should come within three working days and thereafter the voucher should be prepared and handed over to the applicant within another four days. The register should be inspected by the presiding officer frequently to see that vouchers were being prepared promptly and handed over to the applicants. Where the report does not come within time, an explanation should be called for from the official concerned for the delay. The Judicial Reforms Committee suggested that, if necessary, General Rules (Civil) may be amended for this purpose.

Judicial Retorms Committee's recommendations on this matter.

Perhaps in order to give effect to the above recommendation of the Judicial Reforms Committee it was provided in rule 308 of the General Rules (Civil) that it shall be the responsibility of the Munsarim or clerk of the court to see that no unnecessary delay occurs in obtaining the necessary report, in preparing the repayment order and delivering the same to the applicant. It was also provided that presiding officers shall inspect every week the registers of refund applications and require an explanation in any case in which the order for repayment was passed with undue delay. Three days from the date of application, if the record of the case was in the same station as the court, and eight days if the record was in another station, should ordinarily suffice for the disposal of an application for refund of deposit.

Provisions in General Rules (Civil) regarding refund.

The investigations made by the Committee showed that in spite of the above povisions, complaints about delay in the disposal of applications for refund of deposit still persist and it is seldom that a repayment voucher is handed over to the applicant within three days as contemplated by rule 308. We are of the opinion that this provision of rule should be more strictly enforced and the person at fault should be suitably dealt with. For this purpose, we would recommend that a register of refund applications with the following columns should be maintained by every court which should replace the

Delay in this matter still persists.

Amended register of Refund applications recommended.

existing register maintained under G. L. no. 16/447(1), dated March 17, 1937:

1. Serial number.

2. Date on which the application was presented in court or received by post.

3. Particulars of the case.

4. Date on which the application was delivered to the dealing clerk if the record is in the court.

5. Date of the clerk's report.

6. Date on which application was sent to the Record Room if the record had been consigned to the Record Room.

7. Date on which the report from Record Room was received.

8. Date on which application was sent to Nazir for report.

9. Date on which Nazir's report was received.

10. Date on which Presiding Officer passed the order for repayment.

11. Date on which repayment voucher was prepared and signed by the Judge.

12. Date on which repayment voucher was handed over to the applicant.

13. In case of request for sending the amount by money order, the date on which money order form and repayment order were despatched to the Treasury Officer under rule 297, General Rules (Civil).

14. Date on which Treasury Officer sent the money order.

15. Explanation for delay if the repayment voucher was not handed over within the time-limit indicated in rule 308, General Rules (Civil).

16. Remarks.

Munsarim to submit fortnightly delay explanation regarding refund applications.

The Munsarim or the clerk of the court should be required to submit an explanation to the District Judge fortnightly with regard to all cases in which there is a delay of more than a week in handing over of the repayment voucher to the applicant or sending it to the Treasury Officer under rule 297 from the date of receipt of application. As it is the responsibility

of the Munsarim to see that no unnecessary delay occurs in obtaining the necessary reports, he himself or some of the officials subordinate to him can take the refund applications personally to the record room and Nazarat at a fixed time and obtain necessary reports. The necessary amendments may be made in General Rules (Civil).

Refund of deposits through money orders.

Another suggestion that has been made in this connection is that refund of deposits through money orders should be encouraged. Rule 294 of the General Rules (Civil) gives a discretion to the Receiving Officer to repay the unexpended items of petty receipts to the person concerned by means of a postal money order. The proviso to rule 296 similarly permits a refund of an amount other than petty items by means of postal money order provided the sum to be refunded does not exceed Rs.500 and the applicant has added a request to his application that the amount minus postal commission may be forwarded to him by money order at the address that he has registered as his address for the purpose of service of processes under Order VII, rule 19, Civil Procedure Code. A similar provision about the refund of court fee through money order provided the amount does not exceed Rs.100 exists in rule 398 of the General Rules (Civil).

Greater use of money orders for making refunds.

In our opinion, so far as the petty items are concerned it should be made compulsory for the Receiving Officer to return the unexpended amount to the person concerned by means of postal money order after deducting the money order commission in all cases in which the amount is not personally taken back by the person concerned or his duly empowered attorney within a month. The limit of the amount that can be refunded under rule 296 through money orders should be raised from Rs.500 to Rs.1,000 and that under rule 398 from Rs.100 to Rs.200. If these facilities for refund of amounts deposited in court through postal money orders are freely availed of by the parties, a good deal of corruption and harassment existing in this matter can be eliminated.

Refund of deposits in criminal and revenue courts to be governed by rules.

So far as the revenue and criminal courts are concerned, there are no such rules governing the procedure for refund of deposits made in these courts as are found with respect to civil courts. The parties have to undergo a good deal of harassment leading to corruption, in the matter of getting refund of the fines ordered by superior courts or withdrawing the money deposited in proceedings under section 145, Criminal Procedure Code or the decretal amounts in decrees passed by the revenue courts. We recommend that the civil court rules after necessary amendments as suggested by us, should *mutatis mutandis* apply to criminal and revenue courts also.

Return of case property.

It was brought to the notice of the Committee that the litigant public has to undergo considerable difficulty and harassment in the matter of getting back property involved in a criminal case after the decision of the case. There are at present no specific rules regulating the return of the case property after the decision of the case to the person adjudged entitled to receive it. The result is that sometimes there are

long delays in this matter and occasionally there is a deterioration in the value of the property before it is actually returned from the *malkhana* to the person concerned.

Rules to regulate return of case property after the decision of the

In our opinion suitable rules on the lines indicated above should be incorporated in the General Rules (Criminal) to ensure that the case property is duly returned to the person entitled to receive it within a week of his making an application for this purpose. The return should be made in the presence of the Magistrate concerned. It should further be prescribed in the Police Regulations that when a suspected property is seized by a police officer, he should note down in the recovery memo an accurate and detailed description of the property including its correct value as far as it can be appraised, so that at the time of its return the property may be easily identified and the chances of its being replaced by a less valuable substitute might be eliminated.

CHAPTER XV

PERSONNEL OF COURTS

Importance of human agency in the proper functioning of courts.

Most of the difficulties that arise in the administration of justice and many of the delays, harassments and corruption prevailing can often be traced to having their origin in inefficiency and lack of integrity of the personnel. Insufficiency of personnel also plays a significant role in this context. However perfect and clearly laid down a code of conduct; however perfect the rules of procedure; however perfect and comprehensive the laws; these alone can be and are no guarantee against any of the evils of delay, harassment or corruption. It is the human agency through which institutions function, if this human agency is unequal to the task because of improper selection or inadequate training then it cannot produce the desired result. Our investigations have shown that a good deal of failures noticeable in our system of functioning of the courts and their offices is due to faults in the methods of recruitment and training and a complete failure to sustain an adequately high moral sense of duty and integrity amongst many of the men.

The problem of the corrupt official is a problem all its own and we shall deal with it at another place: in this chapter we shall concern ourselves with recruitment, training and adequacy of personnel manning courts and their offices.

A—Officers

Recruitment and qualification.

The recruitment of officers who man subordinate civil courts is made through a competitive examination conducted by the U. P. Public Service Commission. These officers who belong to U. P. Civil Service (Judicial Branch) initially work as Munsifs. A degree of law is essential for these recruits, but at present no period of practice at the Bar is a pre-requisite for recruitment.

So far as the Revenue and Criminal Courts are concerned, they are at present largely manned by officers known as 'Judicial officers' and the officers of the U. P. Civil Service (Executive Branch), popularly known as Deputy Collectors. In the case of Deputy Collectors no degree of law is necessary. Deputy Collectors are recruited from various sources. Some of them are recruited through the Public Service Commission by means of a competitive examination; some are recruited through selection as a measure of emergency and they are called as 'emergency recruits'; some are promoted from the rank of Tahsildars and some are transferred to this service from other posts, like Collection Officers and District Supply Officers. Many of them are not law graduates, nor had they any judicial training. This muddle in the avenues of recruitment has brought in its wake a very noticeable disparity in the efficiency of the members manning this service. Patchwork, as a measure of expediency is rarely conducive to efficiency; in certain spheres of administration it is positively a menace.

The judicial officers' cadre, as we shall see later, has had a curious beginning and passed through several stages with varying fortunes. Initially those persons who manned the service of judicial officers started with no prospects at all; consequently the material that was available for recruitment was not, as it could not be, very covetable material.

It may be mentioned that in this State there is no "separation" in the sense in which that word has been used in Article 50 of our Constitution, which provides:

> "The State shall take steps to separate judiciary from the executive in the public services of the State."

Under the so-called "scheme of separation" introduced in this State the Magistrates belonging to the cadre of "Judicial Officers" decided cases under the Indian Penal Code, while the officers belonging to U. P. Civil Service (Executive Branch) decided cases under sections 107 to 110, 133, 145 and 146 of the Code of Criminal Procedure and also cases arising under some special Acts like Arms Act, Excise Act, Gambling Act, etc. Revenue cases are also decided by both these classes of officers.

The principle, if there was any, on which this division of judicial work in respect of crimes was made does not appear to us to have any sound basis. We are prepared to concede that so far as the use of the preventive sections of the Code of Criminal Procedure is concerned Magistrates belonging to the U. P. Civil Service (Executive Branch) could exercise those powers on some sort of a rational basis, but in respect of other powers we are unable to see any such basis. In this connection we may usefully quote the following observation made by the Law Commission in their 14th Report at page 216:

> "The criminal judiciary in States where the judiciary has not been separated from the executive, however, does not enjoy the same reputation for impartiality as the civil judiciary does. We are inclined to feel that this is largely due to the lack of effective supervision and arises from the dual control of the executive and the judiciary over these Magistrates. On the administrative side, these officers are under the direct control of the State Government. On the judicial side, they come under the control of an independent judiciary, in that, appeals and revisions from their judgments lie to the Courts of Session or the High Court. The administrative supervision exercised by the State Government through its officers over the work of these Magistrates would not appear to serve to bring to notice defects in the working of the machinery due to the dishonesty of the officers. The High Court is perhaps in a better position to form a judgment in this respect but it is powerless to take such administrative steps which would control or correct the officer. If dishonesty is to be rooted out from this branch of the judiciary, it is vital that it be immediately brought under the administrative control of the High Court. There is also in some States an absence of the tradition of impartiality and integrity in the

criminal judiciary as has been the general characteristic of the civil judiciary. Perhaps, the blending of the two into a single cadre as recommended by us, may help to spread the tradition over the combined cadre."

We find ourselves in complete agreement with these observations made by the Law Commission and our investigations indicated that there was, to say the least, a difference in the reputation enjoyed by the magisterial courts and the civil courts. In our view, integration of the Magistrates and the Munsifs into a single cadre under the administrative control of the High Court would result in greater efficiency and more honest administration of justice. We have discussed this matter in greater detail in a subsequent chapter.

It was essential that there should be common qualifications for recruitment to this integrated cadre of Munsifs and Magistrates. Even at present Munsifs and judicial officers are being recruited through a combined competitive examination conducted by the State Public Service Commission and the qualifications for the recruitment were mostly common. The material which was selected through Public Service Commission for filling the two branches of the State Service mentioned above was not, however, the best material that was required for these posts. It was the opinion of some that the material so recruited was capable of improving if there were some changes effected in the methods of selection.

The written examination conducted by the Public Service Commission could be continued but it was necessary to have a *viva voce* test by a Board of specialists in the sense that people who know what material to pick out in order to make a successful judicial officer. A *viva voce* test by the Public Service Commission as at present constituted was unlikely to pick out the right stuff from the stuff available. The blame cannot be placed at the door of the Public Service Commission because the Commission is not made up of specialists in the field of administering justice. In our opinion the *viva* Board constituted for selecting officers for judicial service should be constituted by the High Court and it should be presided over by an experienced Judge of the Court. In this kind of dual selection there arose an obvious question as to what was to happen in case of grave disparity of apprisement through written test and the *viva voce* test. We are conscious of the fact that the *viva voce* test is not now given undue importance in selecting candidates through the Public Service Commission. Without entering into the question as to whether or not this was a sound principle to apply for making a selection of candidates for Public Services, we certainly can say that in those Services where mental alertness, a ready wit and a capacity to express ideas in terse language were required a *viva voce* test was an important test to discover whether or not the candidate to be selected possessed those qualities. A judicial officer required mental alertness, he required ready wit in order to meet spurious arguments and he required a capacity to succinctly put across reasons to counter the reasons placed before him.

Therefore, in our view, if there was grave disparity between the marks obtained by a candidate at the written test and at the *viva*, the *viva* should get preference, for in our opinion in the case of selection of men for manning judicial services of the State, the verdict of the specialists should weigh more heavily than the verdict of examiners of written papers.

It was suggested by some that a three years' practice at the Bar should be made obligatory in the case of candidates wanting to appear for selection to the U. P. Judicial Service. We gave this suggestion our due consideration, but we have been unable to accept it because we found that there was no way of checking whether or not a candidate has actually practised for three years at the Bar. The mere fact that a person remained enrolled for three years is no guarantee that he actually practised at the Bar or attended courts. There was yet another reason why we discountenanced the idea of making three years' practice as a condition precedent for recruitment to judicial service. If this condition is laid down, the minimum age of recruitment would have to be fairly advanced. It did not appear that a bright young man anxious to enter public service would wait so long when he could take other competitive examinations which are equally profitable. Naturally the material available for recruitment would not be of the superior quality which is required. The practice at the Bar was intended to give a new entrant to the judicial service a kind of training which could fit him better for the task which he was going to be called upon to perform as a judicial officer. A course of intensive and properly planned training prior to entry on the actual performance of a judicial officer's work, as envisaged by us in the following paragraphs of this chapter, was, in our opinion, more likely to succeed in fitting young entrants for the job for which they were recruited than just three years at the Bar, unprofitably spent in either waiting for briefs which never came or just wasting time in the Bar Associations doing nothing really profitable.

We are further of the opinion that the minimum age for recruitment to judicial service should be reduced to 21 years with a proviso that a candidate shall not be allowed to appear in the competitive examination more than thrice.

Training.

In our opinion a proper training of the new entrants to judicial service was most essential. The nature and extent of the period of the training should be planned with care by the High Court. We are further of the opinion that this training should be imparted by a set of hand-picked officers, for every officer, however competent he may be in doing his own work, was not necessarily a good person to train others: the capacity to impart training was a quality in itself. Sending the new entrants to one of the Staff Colleges was, in our opinion, not sufficient to subserve the end that we have in view.

During the period of training the young entrants should be made to watch proceedings in court, civil and criminal, in order to make them familiar with the routine procedure of courts. They should be taught to frame proper issues after carefully

perusing the pleadings of the parties and studying the documents on the record. Trainees should be made to acquire thorough knowledge of the maintenance of various registers prescribed by the rules. They should be taught to collect statistical data which are required by the High Court in the quarterly and annual returns and they should be made to know all the work that their subordinates will be doing and which work they will have to supervise. The new entrants should be made familiar with the various administrative departments of the courts like Nazarat, the accounts section, the copying department, the record room and the like; in short, new entrants should get a real training at this stage so that they should know how to make inspections, what to look for, how to look for, and what to make out of any data so collected.

The period of training, in our opinion, should not be less than one year. During part of this training the trainees should be given lectures not only on important subjects of law, with special emphasis on procedure, but they should also be given lectures on what may be called judicial etiquette and judicial and social behaviour. We lay special emphasis on training in regard to judicial etiquette and behaviour in and out of court, for the life of a judicial officer while in service is a difficult one. He is called upon to adjudicate upon conflicting claims, to sift truth from falsehood and uphold the lawful cause. In performing these onerous duties he is often likely to incur the displeasure of those who lose in his court unless he tactfully traverses the narrow path. We should like here to emphasise that not only has a judicial officer to be impartial but he must so conduct himself that he creates an assurance that he is acting impartially.

A judicial officer cannot move freely among people; he has to keep a sort of aloofness in view of the duties which he is called upon to perform. Courtesy with firmness has got to be learnt by all young officers manning the judicial service. Patience tempered with despatch is the other thing which the judicial officer must learn during his period of training. The capacity to exercise administrative control must also be inculcated and developed in the young entrants at the training stage, for his capacity for control of his subordinate staff will not only ensure the despatch that he expects from his office but will also be conducive to an overall despatch and purity of administration.

Training for direct recruits to Higher Judicial Service.

The Judicial Service has a higher Branch known as Higher Judicial Service. This higher rung of the ladder, as we may call it, is manned by officers promoted from the State Civil Service (Judicial Branch) and by men who are recruited directly to it from the Bar. The members of the Bar who are recruited at this stage are taken as a result of a selection held by the High Court. If the recruitment from the Bar to the Higher Judicial Service continues then, in our opinion, these entrants to the service also should get a fairly intensive training before they are called upon to perform the functions of Civil and Sessions Judge.

We are further of the opinion that there should be some "in-service training" for senior Munsifs before they are promoted as Civil Judge as the duties performed by the latter are more onerous and in a way different from those of a Munsif. A Civil Judge also performs the functions of an Assistant Sessions Judge and in that capacity he has to deal with fairly serious criminal cases. Some sort of "in-service training" for the Munsifs at this stage is, in our opinion, very necessary for efficiency. We understand that recently the High Court has introduced this "in-service training" for Munsifs. In—service training for Musifs.

In our opinion it is essential even for eradicating corruption and harassment that all officers manning subordinate courts should be placed under the administrative control of the High Court. The High Court, through the District and Sessions Judge, would be in a better position to watch the working of these courts and apply proper correctives to erring officers. We have recommended elsewhere an integration of the cadres of Munsifs and Magistrates and the complete separation of the Judiciary from the Executive. If this recommendation of ours is accepted, the magistracy would be brought under the administrative control of the High Court which would be in the interest of efficiency and cleaner administration of justice. So far as the Civil Judiciary is concerned, the High Court exercises full administrative control over them in the matter of appointment, transfer, posting and promotion; though in regard to the promotion and posting of District and Sessions Judges and Civil and Sessions Judges, the High Court enjoys merely the privilege of consultation: this, in our opinion, is not satisfactory even though generally the views of the High Court are accepted by the Government. This question was fully considered by the Law Commission in their 14th Report at pages 217–220. They recommended that the entire control over the subordinate judiciary, including District Judges, must, in the interest of efficiency of the administration of justice, be vested in the High Court. We find ourselves in complete agreement with this recommendation of the Law Commission. Administrative control.

Some persons expressed the opinion that there is not much incentive in the Judicial service for honest, efficient and hard work as promotions are usually made on the basis of seniority. It is said that almost, as a matter of course, every Munsif, whether efficient or otherwise, is confirmed, certified to cross efficiency bar and promoted in sequence as Civil Judge and Civil and Sessions Judge. The Law Commission recommended that promotion of a Judicial Officer should be made not only on the basis of seniority but on the basis of his ability and merit. We entirely agree with the views of the Law Commission. According to the Law Commission the High Court should be vigilant in the matters of promotion and it should stop an officer at the efficiency bar if his work was found to be below the standard or if his integrity was, in any manner, in doubt. In our opinion the question of integrity of a judicial officer must receive greater attention at the hands of the District Judges and the High Court. We are of the view that the High Court should periodically check upon all officers for Incentives.

honesty and integrity. Integrity certificates are often given by District Judges without adequate care: these are often couched in the negative. This, in our opinion, was not satisfactory.

Adequacy of their strength.

Generally speaking, the existing strength of the judiciary is insufficient to cope with the work. We have, however, discussed this matter in detail and made suitable recommendations in a subsequent chapter.

B—*Ministerial Staff*

Recruitment and qualifications.

The ministerial staff of the Civil courts as well as of the Collectorates is initially recruited as apprentices through a competitive examination conducted by the District Judge or the District Magistrate, as the case may be, for their respective courts and the courts subordinate to them. The minimum educational qualification prescribed for these posts is High School Certificate or the passing of an equivalent examination. It was suggested by many that we should make Intermediate as the minimum qualification for recruitment to these posts. We agree with the suggestion for a person passing High School Examination does not normally acquire enough knowledge which we need for a clerk.

Intervention of Employment Exchanges not necessary.

In recent times the Employment Exchange has been put in between the courts and those who want employment. We have found that this was not only unnecessary but in many respects the mediation of employment exchange is prejudicial to the best selection. We are constrained to observe that employment exchanges have not earned the name for either fairness or despatch and, therefore, their association with any selection which is made for manning the ministerial services of subordinate courts is, in our opinion, detrimental and should be given up.

Recruitment through open competition.

A competitive examination open to all possessing the required qualifications and conducted under the supervision of the District Judge or the District Magistrate for manning the ministerial services under them at the lowest rung of the ladder is, in our opinion, a satisfactory way of recruitment. A standard pattern for examination should be laid down in order to eliminate the vagaries and whims of recruiting officer. The Committee has no hesitation in expressing the opinion that there should not only be a written test but a *viva voce* test also in order to discover the mental alertness of the candidates.

Training.

It is necessary that the selected candidates should be given a "job training" before they are actually allowed to work in the respective offices of the courts. This "job training" should be intensive and should be imparted with one and only one end in view, namely, to fit the trainee for the job he is recruited.

Departmental Examination.

The superior posts in the ministerial establishment like those of Munsarims, Readers, Record Keepers and Nazirs required not only a greater sense of responsibility but also some knowledge of law and rules. The duties of some of these ministerial officers include the examination of plaints and the

drafting of decrees and orders. But a majority of the staff does not have any knowledge of law. In our opinion there should be a departmental examination which a person should be required to pass for making him eligible for promotion to these posts.

Adequacy of their pay scales.

This subject has been considered by us in detail in a subsequent chapter and we have made suitable recommendations therein for enhancement of the salaries of the ministerial staff.

Incentives.

We need hardly emphasise that honesty, efficiency and hard work should be recognised in making promotions which should not go merely by seniority. One of the common complaints of the ministerial staff of subordinate courts is that they have very little avenues for promotion to higher posts. In our opinion some superior posts like Inspectors of Government Offices, Inspectors of Registration and the like should be available to the ministerial officers of courts subordinate; such of them as are of outstanding merit and integrity should be promoted to these posts.

Chapter XVI

INTEGRATION OF THE CADRES OF MUNSIFS AND JUDICIAL OFFICERS

Extent of corruption inefficiency etc. larger in Magisterial courts than in Civil courts.

The investigations which the Committee made into the prevailing delays, inefficiencies and corruption in the courts subordinate and the evidence which was given by witnesses coming from all walks of life—officials and non-officials—indicated that if one had to apportion the extent of corruption, delays, harassments and inefficiencies between courts subordinate exercising different jurisdictions, then one would have little hesitation in saying that harassments, inefficiencies and corruption prevail in larger measure in courts subordinate exercising magisterial criminal jurisdiction and revenue jurisdiction.

Factors contributing to the above mentioned state of affairs.

(i) Tradition.

Several reasons have contributed to the aforementioned state of affairs prevailing. Two circumstances appear to have contributed largely to bringing about this state of affairs in these courts; one was the tradition which these courts built up because they functioned in the days gone-by in order to subserve one particular end, namely, in the case of revenue courts, to assure that the revenues were collected in time and in full, further that there was augmentation in gathering the revenues rather than any dimunition, while the criminal courts functioned for the purpose of punishing not necessarily the actual wrong-doers but those whom the then Police State wanted to punish as wrong-doers because those people were found inconvenient in some sense to the administration. There was, therefore, a complete lack of what may be called a judicial approach in regard to causes which came up for decision before them with the result that these courts gathered all those evils which "administrative courts" of a Police State show. Traditions die hard and, therefore, it appears that so long as their set up remains what it was in the past the old tradition would remain.

(ii) Inappropriate selection of personnel.

The second circumstance that contributed to the state of affairs mentioned above was the inappropriate selection of persons to do a job they were called upon to do : persons who have had no legal education or legal training were called upon to perform judicial functions of a very exacting type.

Magistrates were rarely law graduates. They had rarely any training in doing judicial work. The result was that there grew up a tendency amongst the magistrates to act in accordance with what they thought was the law rather than in accordance with the law : this suited the police admisistration and, therefore, there does not appear to have been any concerted effort in the past to wean the magistracy, so to speak, from these undesirable paths which they had started treading. The British tradition of justice was, however, not sullied when it came to the determination of questions, either between man and man or between man and the State, when those questions came up before judicial tribunals at the higher levels of the

judicial hierarchy. The tributes that were paid, in India, to the Britishers' sense of justice, to the British courts of justice in India, were tributes to the higher judicial tribunals and rarely was this tribute paid to courts presided over by magistrates doing either criminal or revenue cases.

In the set up of a democratic India determined to abide by the rule of law, the approach to all questions that come up for judicial determination, whether they are in the court of the magistrates or in the subordinate revenue courts must necessarily be in keeping with that profession.

It is not possible to bring about any real change by merely saying or, repeating saying, that there should be a change or that a change was necessary and must come about; a change can only come about by taking some concrete step to usher in that change, for as we have said traditions die hard and unless there is a complete re-orientation of outlook and an overhaul of the machinery, there can be little effective change.

Separation of the Judiciary from the executive would eliminate delays, corruption and harassment from the subordinate criminal and revenue courts.

It has been accepted on all hands and indeed our Constitution makes specific provision in Article 50 under the "Directive Principles of State Policy" that "the State shall take steps to separate the judiciary from the executive in the public services of the State". It is not our intention or function to say how far and to what extent there should be separation of the executive from the judiciary in the sense in which that question has been dealt with by the Law Commission but we consider it necessary and appropriate to indicate that separation would eliminate delays, inefficiencies, harassments and corruption from the criminal and the revenue courts. It may, however, be intersting to note at this place what the Law Commission has said on this matter (See Law Commission's 14th Report, pp. 216–217):

> "The criminal judiciary in States where the judiciary has not been separated from the executive, however, does not enjoy the same reputation for impartiality as the civil judiciary does. We are inclined to feel that this is largely due to the lack of effective supervision and arises from the dual control of the executive and the judiciary over these magistrates. On the administrative side, these officers are under the direct control of the State Government. On the judicial side, they come under the control of an independent judiciary, in that, appeals and revisions from their judgments lie to the courts of Session or the High Court. The administrative supervision exercised by the State Government through its officers over the work of these magistrates, would not appear to serve to bring to notice defects in the working of the machinery due to the *dishonsety of the officers*. The High Court is perhaps in a better position to form a judgment in this respect but it is powerless to take such administrative steps which would control or correct the officer. If dishonesty is to be rooted out from this branch of the judi-

ciary it is vital that it be immediately brought under the administrative control of the High Court. There is also in some States an absence of the *tradition of impartiality and integrity* in the criminal judiciary as has been the general characteristic of the civil judiciary. Perhaps, the blending of the two into a single cadre as recommended by us, may help to spread the tradition over the combined cadre." (The italicising is ours).

As we have observed earlier our investigations have also indicated a comparative lack of tradition of impartiality and integrity in the criminal judiciary and a lack of confidence in the people for courts of the magistrates doing criminal and revenue work.

Some of the States in India have attempted a kind of separation of the judiciary from the executive by resorting to schemes put into effect by executive orders except in the State of Bombay where the separation which prevails there has been brought into effect by an Act of the legislature.

Separation Scheme as in force in Uttar Pradesh.

In Uttar Pradesh the separation was introduced by executive orders in some of the districts. The separation that obtains in these districts takes the form of officers called 'judicial officers'trying criminal and revenue cases. These officers were not under the direct control of District Magistrates but were placed under the control of Commissioners of Divisions through officers who were known as Additional District Magistrates (Judicial). Judicial Magistrates devote their attention practically entirely to the disposal of criminal and revenue cases. They are not allowed to exercise jurisdiction under sections 107, 108–110, 144 and 145 of the Code of Criminal Procedure nor do these magistrates exercise jurisdiction in respect of offences under many of the special Acts which contain punitive provisions in respect of gambling, excise, motor vehicles, firearms, etc.

It has not brought about any real separation.

The aforementioned scheme has not brought about any real separation. It has been merely a separation in form. The Law Commission has commented on this aspect of the separation in Uttar Pradesh in their Report at page 853, second part of para 9.

There can be no two opinions that something has to be done to bring about efficiency, despatch and honesty, both intellectual and otherwise, in that branch of judicial administration which deals with criminal and revenue justice in its original stages.

Two things appeared absolutely essential for remedying this that a change in the outlook of the officers dealing with this work was necessary and that the methods of recruitment, training and control of the officers who dealt with the disposal of the aforementioned type of work needed a complete overhaul. The second thing that was necessary was a redistribution of jurisdictions exercisable by courts subordinate. Jurisdictions of courts have to be redistributed on more rational and scientific basis,

Education and training in law necessary for any one called upon to do judicial work.

Taking the question of the personnel first, it was undoubted that any one called upon to do judicial work must have some judicial competence and this competence can only arise if the person has had education in law and further has had training in administering the law.

As was pointed out earlier, in Uttar Pradesh cases arising under the Indian Penal Code are, by and large, now tried by magistrates who are known as judicial officers. These officers all are law graduates but they have suffered from many shortcomings which we shall indicate later and which have materially detracted from their usefulness as judicial officers.

How the posts of revenue officers and judicial magistrates were created.

The Judicial officers' cadre had a curious beginning. In 1942 some persons from the Bar were appointed as revenue officers on a temporary basis on a fixed salary of Rs.250 per month to decide revenue cases because Deputy Collectors who used to try such cases were too busy furthering the war effort to have sufficient time to devote to judicial work. These officers continued to do purely revenue work till 1949.

In May 1947 Government created another class of officers and designated them judicial officers for deciding criminal cases and conferred on these officers powers of a magistrate of the first class. These officers were also appointed on a temporary basis on a fixed salary of Rs.300 per month for they were meant primarily to clear off the arrears of criminal cases that had accumulated by then. In March 1948 the designation of these officers was changed to judicial magistrates. The recruitment of these officers, whether called by one name or the other, was made haphazardly, at any rate, it did not conform to any well considered principles of recruitment.

In May 1949 all revenue officers were invested with first class magisterial powers and all judicial magistrates were given powers exerciseable by Assistant Collectors of the first class with the result that there was a kind of integration of revenue officers and judicial magistrates so far as the work which they were competent to do was concerned.

By a notification no. 4957/II-A—120-1950 dated October 14, 1950, both the aforementioned officers were merged into one temporary cadre with the designation of "judicial officers"—what has to be noticed here is that the cadre still remained a temporary cadre. We emphacise this temporary nature of the cadre because this had a direct influence, and an adverse one, on the field of recruitment and the material which became available for recruitment.

From what has been stated above, it would be perfectly clear that those who manned the aforementioned services originally started with no prospects at all; consequently, the material that was available for recruitment was not, as it could not be, very desirable material. The first batch of judicial officers started their career as magistrates first class with no training of any kind. These officers, therefore, lacked self-confidence and very often suffered from a sense of inferiority in the setting in which they functioned.

Criticism from various quarters in regard to the nature, prospects and other matters relating to the aforementioned services led Government to reconsider the position and as a result of it 60 officers out of the entire cadre were placed, from 1st of April, 1951, on a permanent cadre while the others continued to function on a temoprary basis.

A pay scale was, however, evolved for these officers—whether on the permanent cadre or on the temporary basis—and the pay scale that was evolved was Rs.300–25/2–500 (they got a bi-yearly increment of Rs.25). Again, in April, 1955, another batch of 60 was made permanent and the pay scale was again revised. The revised pay scale was Rs.250–25–400–30–700–50–850 (though with a starting salary of Rs.300). This scale of pay, it may be mentioned, was at par with the scale of salary payable to Munsifs and Deputy Collectors. It may be here mentioned that on September 1, 1957, another batch of 60 officers was put on the permanent cadre but even so quite a large number of officers continued and still continue on a temporary basis. The Committee has not been able to see any adequate justification for still continuing a large number of officers on a temporary basis for it cannot be said that there was any immediate prospect of their not being adequately employed.

It cannot be denied that judicial officers did very important work—just as important as any magistrate or any other judicial officer—therefore, it was essential in the interests of the administration of justice that the quality and the position of these officers should be at par, at any rate, with the quality and position of other officers doing judicial work at the same level. These officers do only judicial work ; rarely they have to do any admnistrative work. Therefore, by their nature of work they approximate more to officers of the State Judicial Service than to Deputy Collectors. One of the pre-requisite of their recruitment is that they should be law graduates, the same as for the recruitment of Munsifs. At present, both Munsifs and Judicial Officers are recruited by means of a combined competitive examination held by the Public Service Commission. The syllabus for the examination for both is the same except that in the case of judicial officers they have to take two extra papers on Rent and Revenue Law and Indian Penal Code while the candidates for Munsifship examination have to take up an extra paper on substantive law (civil law).

At the present moment, "Judicial Officers" in "non-separation" districts are under the immediate administrative control and supervision of District Magistrates but in "separation districts" they are under the control of the Additional District Magistrates (Judicial). In the matter of control either for the purposes of assessing their work or for helping the younger ones to improve, there is a pathetic lack of either control or supervision though these magistrates have been put under Additional District Magistrates (Judicial) in separation districts. One reason for this has been that neither District Magistrates nor Additional District Magistrates (Judicial) hear any appeals

against the judgements of these judicial officers. Therefore, they rarely get any chance of assessing either a man's worth or knowing what defects he has which call for a remedy. The District Judge, of course, has an opportunity to see their work for he hears appeals and revisions against their decisions but these officers are not under his administrative control, and therefore, the District Judge can exercise but little influence in moulding the quality of these officers.

Judicial Officers' Service and the State Judicial Service may be amalgamated.

In the opinion of the Committee this branch of the State Service would be of greater use to the people in administering criminal and revenue justice to them if this service were amalgamated with the cadre of the State Judicial Service, for then these officers would have, if nothing else, an age old tradition of useful and honest public service to inspire them. During the visit of the Chairman to the places he visited for on-the-spot investigation, some members of the present service of judicial officers were asked whether or not they preferred to remain in a separate cadre or they preferred amalgamation with the cadre of the Munsifs. Officers, without a single exception, expressed preference for amalgamation with the cadre of the Munsifs. The reason for this preference was not difficult to understand, for these officers, as can be gathered from what has been said above, have a kind of "left out feeling". The magistracy—both the I.A.S. and the State Civil Service—would have no "truck with them". The Deputy Collectors, the Committee was told, by and large, also asserted their superiority. Not being a part of the State Judicial Service, the Munsifs and Civil Judges also treated them as strangers with the result that the atmosphere which prevailed around them or which surrounded them was anything but conducive to good service conditions.

There appears to be only one way of saving this service, it appears to the Committee, from the undesirable inhibitions into which it has fallen and is falling as time passes by and that was to amalgamate this service with one of the two age old State Services, namely either the Deputy Collectors or the Munsifs. From what has already been stated above, the amalgamation of this service with the Deputy Collectors was unlikely to inspire public confidence, further it was likely to create much greater administrative problems than if they were amalgamated with the cadre of the Munsifs. The amalgamation of these officers with the cadre of the Munsifs was unlikely to present any serious difficulties and the amalgamation was certainly going to bring in its wake many advantages. One clear advantage would be that with the amalgamated cadre Munsifs would be doing criminal work and Judicial Officers would be doing civil work which would be a definite advantage to the administration of justice, for at present Munsifs do not do any criminal work with the result that they rarely acquire any experience of this branch of work though after some years of service they are called upon to dispose of serious criminal cases as Assistant Sessions Judges. The administrative control of the High Court over the amalgamated service would be greatly conducive not

Advantages of the amalgamation of the two services

only to better supervision and direction, but it would greatly enhance public respect and confidence for the officers manning this service.

Some minor administrative difficulties may be visualised by some critics of this scheme but all these are minor and can, in the opinion of the Committee, be adequately resolved without doing any injury to any one.

The amalgamation suggested above would bring about better efficiency, better despatch and less of corruption in the disposal of criminal and revenue work in courts subordinate because all those factors which have contributed to keep the standards of civil courts at a higher level than the standards of the other courts during the past would operate to improve the standard of courts doing criminal and revenue cases.

CHAPTER XVII

STRENGTH OF JUDICIARY

As was stressed earlier, one of the chief factors contributing to delays, harassments and corruption prevailing in courts subordinate had been the inadequacy of the personnel to cope with the volume of work. If there were adequate number of officers to deal with the work, then obviously the chances of delays in disposal and the consequent harassment would automatically be eliminated.

Inadequacy of the personnel.

The Law Commission has indicated the respective periods of time that may elapse between the registering of a cause in court and its disposal. According to the Commission, a regular contested suit in a Munsif's court should normally be disposed of within a year and in a subordinate Judge's court within one year and a half. Small Cause suits should be disposed of within three months, regular contested civil appeals in district courts within six months and miscellaneous civil appeals in such courts within three months. These standards are by no means unattainable.

Time limits for disposal of civil cases.

With regard to the disposal of criminal cases the Commission expressed the opinion that cases in magisterial courts should be disposed of within two months and committal proceedings should be completed within six weeks from the date of the apprehension of the accused. A sessions case was to be disposed of within three months from the date of the apprehension of the accused. Criminal appeals and revisions were to be disposed of within two months from the date of institution.

Time limits for disposal of criminal cases.

In the opinion of the Committee the periods indicated by the Law Commission were not only reasonable but attainable for the disposal of the respective types of cases and, therefore, accepting those as the period of time during which the various types of cases should have been disposed of a large number of cases had to be reckoned as arrears in all grades of courts.

Arrears

The position of pending cases in the various courts at the end of 1959 was as follows:

> Two hundred and twenty-four cases over a year old pending in the courts of the District Judges of the State; 2,595 cases over a year old pending in the courts of Civil Judges; 43,015 cases over a year old pending in the courts of Munsifs; 1,247 appeals over a year old pending in the courts of District Judges and 6,267 over a year old appeals pending in the courts of Civil Judges.

Strength of officers should be sufficient to clear off arrears and to dispose of current business.

The only sensible method of tackling the problem which faces the administration of justice is to tackle the arrears separately by employing a sufficient number of additional officers and to keep disposing of the current work by employing a sufficient number of officers who could deal with that volume of work

within the time indicated by the Law Commission so that there should be no further arrears, so far as the current work was concerned. The root cause of the progressive accumulation of old cases in the State has been that in the past the strength of the judiciary was not increased to keep pace with the increase in the institutions. The inadequacy of the strength of the subordinate judiciary had been pointed out by the High Court from time to time in their Administration Reports. It must be clearly appreciated that delay in the decision of cases not only causes harassment to the parties, but it also, to an extent at any rate, affects the chance of a court coming to a right decision, for delay not only makes the impression of witnesses hazy but it also provides opportunity to parties to tamper with the evidence.

Inadequacy of strength of judiciary emphasised in the past.

The U. P. Judicial Reforms Committee (1950-51) observed in their report:

> "As we shall show hereafter, the civil judiciary is undermanned and consequently overworked. Where a Munsif previously handled a file of 200 cases, he has now to deal with a file of even 700 or 800 cases. The condition in the courts of the Civil Judges is no better."

The position became still worse after 1951. Recently the High Court made a reference to the Government emphasizing the need for a considerable increase in the strength of judicial officers. They observed:

> "The Court takes a very grave view of the delay with which the courts are disposing of cases in civil courts and sessions courts. It reflects no credit on the administraiton of justice that sessions trials (barring those of capital offences) take about a year and a half for disposal, civil suits take more than a year for disposal in the trial court, civil appeals are not disposed of for 2 and 3 years and criminal appeals also take a long time for disposal. The delay in the disposal of a suit and a civil appeal means that the aggrieved party is left without any redress for many years. In many cases, it would be hardly worth while filing a suit in the civil court for redress. If the administration of civil justice is not to be reduced to a farce, urgent measures are necessary to prevent the delay. Judicial Officers are, as a rule, making the fullest use of their time and the Court does not think that they can dispose of substantially more work..... The accumulation of arrears is due mostly to inadequacy of officers of all grades."

Unfortunately, the problem was not tackled at the earlier stages when it had not assumed such a discouraging look and when it would have been easier of solution. Paucity of funds could not justly be pleaded as an explanation, for there always was surplus from the court-fees and other dues collected in courts after meeting legitimate expenses of maintaining the judicial sector of the State.

In the opinion of the Committee any further delay in providing adequate strength to the subordinate judiciary was likely to cause grave repercussions on the entire body politic.

Any further delay would have grave repercussions.

A litigant was entitled to have his cause decided by a court within a reasonable time, particularly when he has made "advance payment" for such a determination.

In the opinion of the Committee it was not practicable to tackle those cases which are to be treated as arrears and those cases which fell in the category of current business in accordance with the standards mentioned earlier for disposal of different kinds of cases, together. The one great drawback of treating all cases on the same footing would be that current work would not appear as current business for a good length of time. Cases which have fallen into the category of arrears are unlikely to suffer any further appreciable harm if their disposal is delayed a little more but delaying disposal of current business is fraught with many dangers, for delay breeds delay like hate breeding hate. Delay in disposal very often necessitates substitution proceedings—in suits in which stay orders are obtained by parties they invariably make every conceivable effort to further delay disposal in order to preserve the *status quo ante*. This state of affairs should not, in the opinion of the Committee, be tolerated any longer than was absolutely essential.

Arrears to be treated separate from current business.

The Committee is definitely of the opinion that once courts subordinate start disposing of their current business expeditiously then there would be a tremendous impression on the public mind and the avenues of corruption will automatically stop.

To achieve the aforementioned objective, it would be necessary to augment the cadre by two types of officers: (1) those who would be permanently absorbed in the cadre in order to keep abreast of the volume of work that comes up for disposal in the normal course in the different grades of courts, and (2) those officers who will have to be employed, so to speak, temporarily for the purpose of clearing off the arrears that have accumulated.

Permanent and temporary increase of the cadre of judicial officers.

District and Sessions Judges—These posts are borne on the cadre of Higher Judicial Service in the senior scale. The present sanctioned strength of the cadre of District and Sessions Judge is 44 and out of these 38 posts are filled by judgeships at the following places:

Saharanpur, Muzaffarnagar, Meerut, Bulandshahr, Aligarh, Mathura, Agra, Mainpuri, Etah, Bareilly, Bijnor, Budaun, Moradabad, Rampur, Shahjahanpur, Farrukhabad, Kanpur, Allahabad, Jhansi, Varanasi, Jaunpur, Ghazipur, Ballia, Gorakhpur, Basti, Azamgarh, Kumaon, Lucknow, Unnao, Rae Bareli, Sitapur, Hardoi, Kheri, Faizabad, Gonda, Bahraich, Sultanpur and Bara Banki.

The balance of the 44 cadre posts is made up by—

Additional District and Sessions Judge for Meerut, Moradabad and Aligarh (combined).	... 1
Registrar, High Court, Allahabad	... 1
Judicial Secretary to Government and Legal Remembrancer	... 1
Deputy Legal Remembrancer to Government	... 1
Posts for Deputation Reserve	... 9
Total	... 44

Number of officers actually working as District Judges or on equivalent posts.

In June, 1960, there were actually 61 officers working as District and Sessions Judges or on equivalent posts. Out of them 40 were holding charge of Sessions Divisions (besides the 38 permanent judgeships mentioned above, Banda and Etawah have also been created as independent judicial districts, but these judgeships are still functioning on temporary basis). At present there is one District Judge in charge of a sessions division. A sessions division is, however, not always co-extensive with a revenue district. Some sessions divisions like those of Kumaon and Jhansi include more than one revenue district within their ambit. Six officers are holding posts in Law Department consisting of one Judicial Secretary, one Additional Secretary, two Joint Secretaries and two Deputy Secretaries, one holding the post of Registrar, High Court and three working on deputation posts as Judicial Commissioner, Himachal Pradesh, Judge (Revisions) Sales Tax, and Custodian, Evacuee Property. Besides, nine officers were working as Additional District and Sessions Judges in various districts and two as Special Judges at Lucknow.

Need for more District Judges.

On account of the accumulation of cases exclusively triable by a District Judge there is demand for Additional District Judges from some of the districts which have at present no such officer and where the pressure of work is heavy. Under some recent enactments some election petitions have been made triable by District Judges and these election petitions are required to be disposed of expeditiously. The District Judges have under the changed law also to hear revisions arising out of Small Cause Court cases and appeals from the decisions of Civil Judges up to a valuation of Rs.10,000. All this has meant additional burden for these officers. Further, the number of sessions cases has also greatly increased in recent years: in the year 1947 the total number of cases committed to the Sessions Court was 2,519 while their number rose to 6,865 in the year 1959, which meant an increase of 172 per cent. This tremendous increase in the judicial work load of District Judges leaves little time to them to devote to effective supervision and control of the subordinate courts. This circumstance has partly contributed to increased harassment and corruption prevalent in subordinate courts.

In regard to District Judges' work the Law Commission has observed:

"It has to be remembered that the District Judge's work is a very responsible one. He is the head of the district judiciary and in addition to his normal judicial work, the primary responsibility for supervising and controlling the judicial work in the district also rests upon him. These form an extremely important part of his duties. Elsewhere we have been at pains to emphasise the comparative need for very strict superintendence over the subordinate courts. If the District Judge is to adequately discharge his duties of supervision and control, it is essenital that he should be given relief in his judicial work. Unfortunately the present trend is in the direction of an increase of his judicial work under various special Acts. It is abundantly clear, therefore, that the judiciary at the level of the District Judge is heavily deficient in strength in most of the States."

Observations of the Law Commission in regard to District Judges' work.

The Committee is of the opinion that an increase in the permanent cadre of District and Sessions Judges is very necessary so that they may be able not only to quickly dispose of their judicial work but also be able to exercise adequate supervision and control over courts subordinate to them.

The Committee recommends that the judgeships of Etawah and Banda be made permanent and that judgeships be also created for Dehra Dun, Hamirpur, Jalaun, Pilibhit, Mirzapur, Pratapgarh, Deoria and Fatehpur districts. These districts are at present included in the other bigger sessions divisions. From the point of view of efficiency and better administration it seems desirable that a sessions division should cover only one revenue district unless a revenue district was so small that a separate judgeship could not be justified for it.

Creation of new judgeships.

The number of permanent posts in the Law Department borne on the cadre of the District and Sessions Judges should be increased from two to five. The Committee understands that this has already been proposed by the Government and the High Court has agreed with this proposal. The post of Secretary, Legislature, which is being held by a District Judge for the last several years should also be included in the cadre. The Committee recommends that in view of the increased demand of District Judges for deputation on special posts in the State and outside, the number of posts for deputation reserve should be increased from two to four and five posts should be added for leave reserve. In this manner the permanent strength of the cadre of District and Sessions Judges be fixed at 65 and their services be employed as follows:

Augmentation of the cadre of District and Sessions Judges.

District Judges in 48 districts, excluding the districts of Almora, Tehri-Garhwal and Garhwal and the three border districts	...	48
Post of Registrar, High Court	...	1
Posts in Law Department including the post of Judicial Secretary and Legal Remembrancer	...	5
Post of Secretary, Legislature	...	1

Posts for deputation reserve	...	4
Posts for leave reserve	...	5
Post of Additional District and Sessions Judge, Meerut, Moradabad and Aligarh	..	1
Total	...	65

Provision of Additional District Judges on temporary basis.

The Committee is conscious that besides one Additional District Judge provided above, more Additional District Judges may be required to cope with the judicial work which is exclusively triable by District Judges. But the Committee has not enough material before it on which to judge how many of these posts can be placed on a permanent basis. Hence these posts of Additional District and Sessions Judge should, in the opinion of the Committee, remain on a temporary basis for the present. There should be provision for at least 10 such temporary posts besides the increase in the permanent cadre suggested above.

Civil and Sessions Judges—These posts are also borne on the cadre of Higher Judicial Service but in the junior scale. The existing sanctioned strength of Civil and Sessions Judges is 40, including the post of Joint Registrar, High Court, Allahabad, and five posts for leave reserve, but the number of officers actually working as Civil and Sessions Judges was 75 in June, 1960; besides, 10 officers of the rank of Civil and Sessions Judges were working in the Law Department of the State and manning other special deputation posts.

Need for increase of Civil and Sessions Judges to cope with work.

In order to cope with the increase in sessions trials and criminal appeals and revisions—(there has been a tremendous increase in these cases since 1947 as would be evident from Appendix F)—a large number of temporary posts of Civil and Sessions Judges had been created. With the present permanent and temporary strength of Civil and Sessions Judges, we were just able to balance the disposals with the institutions though in 1959 disposals were a shade more than institutions because 6,865 sessions cases were committed to Sessions Courts for trial and the total disposal in that year was 6,914. The total number of cases exclusively triable by Sessions Judges pending at the end of March 1960, was a little more than three thousand. According to the time limits indicated by the Law Commission a sessions case should be disposed of within six or seven weeks from the date of commitment. This is possible only if the pending file of sessions cases is reduced to about 1,200, and on this reckoning we find that in this class of cases about 1,800 cases should be classed as arrears. The Committee feels that with the addition of about 20 more temporary courts the file of sessions trials can be reduced to the desired level so as to decide these cases in future within the time limit suggested by the Law Commission.

It is not possible to visualise at what figure sessions cases would, so to speak, stabilize in future years. The Committee is of opinion that 50 Civil and Sessions Judges would be the minimum requirements for keeping abreast of current work in future years. It is, therefore, recommended that permanent strength of Civil and Sessions Judges be increased from 40 to 50 including deputation and leave reserve. Besides these permanent posts, 45 temporary posts in this category would be necessary for one year for disposing of arrears. A revision of requirements may have to be made after a year or so in the light of changed conditions following the implementation of our other recommendations.

Permanent and temporary increase in the cadre of Civil and Sessions Judges.

Our immediate total requirement of officers to fill up these superior posts, borne on the cadre of higher judicial service may be fixed at 170 out of which 115 are required on a permanent basis and the rest on temporary basis. This number includes deputation and leave reserve also.

In August, 1960, about 150 officers were actually working and drawing salary in the scales prescribed for the Higher Judicial Service, so there appeared no adequate reason why the deficiency in the strength cannot be made good by promoting about 20 deserving Civil Judges on a temporary basis.

The Committee has noticed that often permanent vacancies in the cadre of the Higher Judicial Service remained unfilled for several years and that officers are made to work in a sort of temporary capacity against these posts. This not only puts the officers to a disadvantage but it also has undesirable result of reducing the effective strength of the munsifs. The Committee is of the opinion that the permanent posts in the cadre of Higher Judicial Service should be filled up without undue delay.

Permanent posts in the cadre of Higher Judicial Service to be filled without delay.

A question was also raised before the Committee whether the existing nomenclature of these superior posts in the Higher Judicial Service which was peculiar to this State should continue or there should be a uniform scale of pay and their designations should be as has been recommended by the U. P. Judicial Reforms Committee and the Law Commission and as it is in force in most of the States. The Committee refrains from expressing any opinion on this question that was raised for this matter did not fall strictly within the terms of reference of the Committee.

Nomenclature of the post of Civil and Sessions Judge.

Civil Judges and Munsifs—It is in the courts of the Munsifs and Civil Judges that we find a great accumulation of cases. As we mentioned earlier in this Chapter the total pending file of regular suits in Munsifs' courts on 1st January, 1960, was 76,237. The total pending file of regular suits (excluding Small Cause cases) in Civil Judges' courts on the same date was 4,480. Besides regular suits, there were 15,143 civil appeals pending in the courts of Civil Judges on January 1, 1960. Having regard to the time limits suggested by the Law Commission within which period regular suits and civil appeals should be disposed of in the courts of the Munsifs and Civil Judges, aboout 30,000 regular suits in Munsifs' courts and 2,500 regular suits and 8,000 civil appeals in the courts of Civil Judges have to be treated as arrears.

Strength of Civil Judges and Munsifs.

The problem, therefore, is to clear off these arrears within a reasonable time and to dispose of the current business within the time limits indicated by the Law Commission. With that end in view we have to examine how far the existing strength of these officers is adequate.

From the data available it was difficult to say that the available strength of Munsifs and Civil Judges was sufficient to cope with institutions for all time to come or for the matter of that for any length of time. Not only the number of institutions but also the nature of cases have a bearing on disposals. With industrialization proceeding at the fast rate at which it is proceeding in certain areas, the nature of litigation, even in Munsifs' courts was likely to be more complicated than it is at present and naturally these cases were likely to take a longer time in disposal.

A scrutiny of the figures of institutions of regular suits in the courts of Munsifs shows that before the abolition of zamindari, i.e. in 1949, 1950 and 1951, the average annual institution was about 56,000 cases. After the abolition of zamindari on July 1, 1952, a major change took place and all declaratory suits in relation to agricultural land and partitions in respect of holdings were made cognizable by civil courts. The result was that there was an unprecedented increase in the number of suits instituted in Munsifs' courts. The peak was reached in 1955 when 1,01,505 suits were instituted in Munsifs' courts. At the end of that year the pending file of Munsifs rose to 1,26,786 when it was only 61,985 at the end of 1951.

Since then the Legislature brought about a number of changes in the Revenue laws which affected the jurisdiction of the civil courts. In 1954 the cases regarding determination of rights of assamis and adhivasis were made cognizable by revenue courts, in 1956 suits relating to rights of sirdars and division of holdings were made cognizable by revenue courts and in 1958 cases regarding the determination of the rights of bhumidars were also taken away from the jurisdiction of civil courts and were made cognizable by revenue courts, though it was provided that pending cases would continue in civil courts.

The result of the above was an immediate fall in the suits instituted in Munsifs' courts. In the year 1956 the number of cases instituted in these courts was 87,986 as against 1 01,505 in the previous year. In 1957, 1958 and 1959 there was a further fall when 65,404, 65,796 and 46,448 cases respectively were instituted. It is likely that in 1960 and subsequent years the annual institution in Munsifs' courts may be stabilized at about 50,000 suits.

There was a fall in the institution of regular suits in the courts of Civil Judges also.

The existing sanctioned strength of Munsifs and Civil Judges is as follows:

Civil Judges	...	65
Munsifs	...	201
Total	..	266

In the year 1959 there were 10 judges of Small Cause Courts, 74 Civil Judges and 151 Munsifs actually working on these posts. Their total came to 235. These officers were able to dispose of the current institution and also create some impression on the arrears by reducing them from 96,949 to 76,426. If the current institutions in the courts of Civil Judges and Munsifs keep within the figures indicated above and the full sanctioned strength of 201 Munsifs and 65 Civil Judges was actually available, the Committee was of the opinion that that strength could be able to dispose of the current institution, and within the next two years reduce the arrears to such a figure that civil cases would be decided within the time limits indicated by the Law Commission. The Committee, therefore, does not propose any addition to the cadre strength of Civil Judges and Munsifs. It only suggests that the sanctioned strength should immediately be made available for disposal of judicial business in the two grades of courts. The Committee wish to clearly point out that it is just possible that after two or three years a revision of the requirements may have to be made in the light of the changed conditions which may come into being due to our other recommendations.

Number of Civil Judges and Munsifs actually working.

We may thus summarise our recommendations as follows:

Summary of recommendations.

(1) The permanent strength of District Judges should be increased from 44 to 65.

(2) The permanent strength of Civil and Sessions Judges should be increased from 40 to 50.

(3) Ten posts of Additional District Judges on a temporary basis and 45 posts of Civil and Sessions Judges on a temporary basis should also be provided for.

(4) The permanent strength of Civil Judges and Munsifs should remain unchanged at 266.

In this way the total manpower which would be required is 436. As against it the total manpower available in August, 1960, was about 386 including temporary hands and those under training. Thus there is a shortage of 50 officers which can be made good by recruitment of 50 temporary munsifs.

The Committee is conscious of the fact that the creation of another 50 courts would raise the problem of providing suitable accommodation for the court rooms of these officers and for their residence. The problem of accommodation is already acute in most of the districts. We shall deal later on about the effect of poor working conditions on efficiency and corruption. For the present we may recommend that the State Government in its next Five-Year Plan should make sufficient provision for providing accommodation for civil courts and the residential accommodation for the officers.

As regards the strength of Magistracy, the general opinion, as can be gathered from the replies to the Questionnaire and the oral evidence of witnesses examined by the Committee, is that their strength is inadequate to cope with the volume of work. The Committee is not, however, on the basis of the material collected by it, in a position to make any concrete proposal about the increase of the strength of the magistracy. The question of fixing up the strength of magistracy will have to be examined in the light of the decisions which Government may take on the recommendations of the Committee on other connected matters such as integration of the cadres of Munsifs and Magistrates, retention of Honorary Magistrates and their number.

CHAPTER XVIII

PAY SCALES OF THE MINISTERIAL STAFF OF SUBORDINATE COURTS

Staff should be paid a living wage.

The Committee devoted a good deal of time and attention to the question as to how far lack of integrity in the staff of various courts was due to inadequate remuneration and bad working conditions. A specific question on the point (Question no. 14 of the Questionnaire) was incorporated in the Questionnaire issued and opinion was invited. Replies received express the unanimous view that inadequate remuneration and bad working conditions of the staff are to a large extent responsible for lack of integrity. The Committee feels that there can be no two opinions on the question that in order to root out corruption, even partially, it is necessary that the staff of the various courts should be paid a living wage so that economic pressure may not compel them to supplement their meagre means by accepting illegal gratification and such members of the staff who are driven to adopt this evil practice under economic pressure may better be able to resist the temptation.

What should be the living wage.

The problem of determining a living wage offered considerable difficulty to the Committee. Obviously, there could not be any uniform wage for all types of employees and for all times. Living wage depends upon prevailing prices, the size of a person's family, which increases with the advancement in age, the standard of living to which a person is accustomed and other similar factors.

Till recently the minimum remuneration paid to a clerk of the lowest grade in various offices other than the Secretariat of the Central Government and the Governments of some of the States was as follows:

		Rs.	
Central Government		115	
Assam	...	103.5	
Punjab	...	100	
Madhya Pradesh	...	76	
Rajasthan	...	95	
West Bengal	...	106	
Uttar Pradesh	...	95	(60 plus 35 D. A.).

The Central Pay Commission recommended the enhancement of this minimum wage of a clerk of the lowest grade in the various offices of the Central Government from Rs.115 to Rs.120 (consisting of 110 as basic pay and Rs.10 as dearness allowance). The Central Government has accepted this recommendation of the Central Pay Commission.

The Madhya Pradesh Government appointed a Pay Committee presided over by Mr. Justice Tara Chand which recommended that the minimum remuneration of a clerk of the lowest grade should be raised to Rs.100. The Government of Madhya Pradesh recently announced its decision accepting the recommendation of this Committee.

The recommendations which the Central Pay Commission has made in regard to minimum wages as also the recommendation which was made to the Madhya Pradesh Government by the Committee appointed under the chairmanship of Mr. Justice Tara Chand had apparently as their basis the minimum requirements of a worker in order to exist under the prevailing economic conditions. In order to arrive at the minimum wage one has to take into account the price index governing food prices and the prices of other necessaries of life. One has, also, while arriving at a figure, to determine the average size of the family which the wage earner at the threshold of his career has to maintain.

In Appendix G will be found a chart showing the price index of necessaries of life according to the current prices published in the monthly bulletin issued by the Economics and Statistics Department of the Government of Uttar Pradesh for March, 1960.

The ministerial staff of subordinate civil courts is almost, without exception, recruited from apprentices and there is very rarely, if ever, a direct appointment to a ministerial post without a person having had to spend a period of time as an apprentice. Investigation has shown that the average age of an apprentice when he gets his first employment is about 22 years. At this time his family generally consists of himself, his wife and a child of 1 to 3 years of age.

At the age of 25 when he generally gets absorbed into a permanent cadre his family increases with the result that besides himself, his wife and one child he adds at least one more to his family. Similarly, his family burden keeps increasing progressively. Working the expenses on the basis of the prevailing prices shown in the Economics and Statistics Department Bulletin for March, 1960, the minimum wage for an employee in the lowest rung of the ladder should be at least Rs.100 per mensem. In this context it would not be out of place to remember that today an unskilled labourer earns at least Rs.60 per month. In KAVAL towns a rickshaw-puller earns anything between Rs.90 and Rs.100 per month. With this wage earning potential for unskilled work it looks most unjustified that the State should pay any employee, who has had an amount of education, anything less than Rs.100 per mensem.

The Uttar Pradesh Civil Courts Ministerial Officers' Association submitted a memorandum in which they indicated that calculating the expenses on the basis of figures given by the Economics and Statistics Department, the normal expenses of a family when the wage earner is about 22 years of age would be Rs.100 per month; when the wage earner would be 25 it would be Rs.130; and when the wage earner would be 35 years

of age it would be Rs.230 per month as shown in Appendix H. In the opinion of the Committee, the aforementioned figures given by the Association were not entirely unjustified: what, however, appeared to the Committee to be unjustified was the expenditure figure arrived at by the Association for the wage earner in the 35 years age-group.

In order to fix a time scale for an employee of the State many considerations other than wage earner's economic responsibility have to be taken into account. The Committee after taking into consideration all relevant circumstances into account has come to the conclusion that the minimum salary which the State should pay to the person whom it employs whether as an apprentice or in any other capacity for the first time should not be less than Rs.100 per mensem. The Committee wishes to make it clear that this figure of Rs.100 which they recommend is inclusive of the dearness allowance and that it would be for the State Government to apportion the dearness allowance and the salary.

The pay structure which at the present moment prevails is as follows:

(1) Paid Apprentice who forms the lowest rung of the ministerial ladder gets Rs.40 as fixed pay plus Rs.33 as dearness allowance, a part of which is treated as dearness pay under G. O. no. G—1—353/X—116—1959, dated June 29, 1959.

(2) Clerks of the IV Grade which includes Court Ahalmads, Assistant Nazirs and Assistant Record-keepers are in the scale of Rs.60—4—80—E. B.—5—120 plus Rs.35 as dearness allowance a part of which is according to the aforesaid G. O. treated as dearness pay.

(3) Clerks of the III Grade which includes some of the Amins, Readers of the Courts of Civil and Sessions Judges and Munsarims of the courts of Civil Judges and Munsifs are in the scale of Rs.85—6—145 plus Rs.35 as dearness allowance, a part of which is treated as dearness pay in accordance with the aforesaid G. O.

(4) Clerks of II Grade which includes a few selected posts like those of Central Nazir, Record-keeper, Second Clerk, District Judge's Reader and Munsarim of Civil and Sessions Judge's Court are in the scale of Rs.150—10—200 plus dearness allowance of Rs.40. This scale obtains in judgeships termed as First Class Judgeships. There is a lower scale in other judgeships and it is of Rs.100—10—150 plus Rs.35 as dearness allowance. As mentioned in the Government Order cited above, a part of the dearness allowance in each of the aforesaid two cases is treated as dearness pay.

(5) Sadar Munsarims or the Munsarims of the District Judges are in the I Grade, the salary of which is in the scale of Rs.215—15—275 in the case of First Class Judgeships and Rs.200—10—250 in the case of other Judgeships plus Rs.40 as dearness allowance, a part of which is treated as dearness pay in accordance with the aforesaid Government Order.

Disparity in the pay scales of Sadar Munsarim and Office Superintendent unjustified.

It may be pointed out that although the type of work which the Munsarim of the District Judge does and what an Office Superintendent of a Collectorate does are more or less the same yet there was no parity in their emoluments, for the Office Superintendent of a Collectorate in the larger towns gets a salary in the scale of Rs.275—15—350 while in other towns his scale is Rs.250—10—300 exclusive of dearness allowance.

The scale of the Office Superintendent used to be the same as the scale of the Sadar Munsarim before the salaries of the ministerial staff of the Collectorate were revised recently under the Reorganization Scheme. Before 1947 the scale of pay admissible to the Sadar Munsarim was higher than that of the Office Superintendent. The Committee has not been able to find any adequate reason for making any distinction between the pay scales of the Office Superintendent of the Collectorate and the Sadar Munsarim of the Civil Courts. The Ministerial Officers' Association very justly, in the opinion of the Committee, made a pointed grievance of this fact. This anomaly, in the opinion of the Committee, should be removed without any further delay.

On the basis of the minimum basic starting pay as indicated earlier, the scales of salary of the various grades of ministerial staff needed revision. The Central Pay Commission has recommended the scales given below for the clerical staff employed by the Central Government. The scales are:

For Lower Division Clerks—

Ordinary Grade—Rs.110—3—131—4—155—E.B.—4—175—5—180.

Selection Grade—Rs.150—5—175—6—205—E.B.—7—240.

For Upper Division Clerks—

Ordinary Grade—Rs.130—5—160—8—200—E.B.—8—256—8—280—10—300.

Selection Grade—Rs.210—10—290—15—320—E.B.—15—380.

The Central Pay Commission has further recommended that to such of the staff that performs supervisory duties higher pay should be paid and they have accordingly recommended higher rates for them. They have recommended certain allowances also. The Government of India have recently announced their decision accepting the recommendations of the Central Pay Commission.

The Committee feels that it would be conducive to, not only all round satisfaction, but would provide the necessary impetus and give incentive, zest and a new meaning to the hard worked subordinate clerical staff of the courts if the Government of the State could adopt the scales recommended by the Central Pay Commission. The Committee, being conscious of the various demands on the exchequer of the State for national development programme, does not feel justified at this stage to press for the acceptance of the scales recommended

by the Central Pay Commission. The Committee, however, is definitely of the opinion that an immediate revision of the pay sclaes is called for and that the scales should not be less than the scales indicated below: Suggested pay scales.

For Sadar Munsarim—Rs.275—15—350 in bigger judgeships of KAVAL towns, Bareilly, Kumaon and Meerut.

Rs.250—10—300 for other judgeships.

For clerical staff, Grade II—Rs.165—10—215 for bigger judgeships of KAVAL towns, Bareilly, Kumaon and Meerut.

Rs.150—10—200 for other judgeships.

For clerical staff, Grade III—Rs.100—6—160.

For clerical staff, Grade IV—Rs.75—5—135.

Paid Apprentice Rs.65 fixed pay.

The aforementioned scales are exclusive of the dearness pay and allowance admissible to Government employees from time to time.

The Committee is of the opinion that the old classification of judgeships into First Class Judgeships and other judgeships has now become outmoded since the very basis for that classification has disappeared. Formerly in some judgeships more than one revenue district was included and such judgeships were classified as First Class Judgeships. Now most of these bigger judgeships have been split up into two independent judgeships. Only a few judgeships are left which include in them more than one revenue district. According to our recommendation these judgeships should also be split up with the possible exception of Kumaon Judgeship. Hence there should be no reason left for classification on this basis any more, all the same, a classification seems necessary in view of higher cost of living in the KAVAL towns and towns like Bareilly, Naini Tal and Meerut. Besides higher cost of living, these places call for heavier work and responsibility from the superior ministerial staff. The Committee, therefore, feels that the two scales of pay recommended above for the Sadar Munsarim and the ministerial staff of Grade II should be applicable to the judgeships in KAVAL towns, Bareilly, Kumaon and Meerut on one hand, and other judgeships on the other. Classification of judgeships.

In the opinion of the Committee a proper classification of posts in the different grades was intimately linked with the pay scales admissible to the various grades. There are certain well-known principles which in the opinion of the Committee, must apply to every such classification. The nature and quantum of work which the incumbent of a particular post has to perform are two important factors to be taken into consideration for classifying a post in a particular grade. Bearing these factors in mind the Committee recommends the grading of posts as under: Classification of posts.

Sadar Munsarim—This post falls in the category of the staff which has to perform supervisory duties. Hence the Committee has recommended for this post a scale higher than those of the rest of the ministerial staff.

Posts in Grdae II—Second Clerk, Reader of District Judge, Central Nazir, Record-keeper, Munsarim, Civil and Sessions Judge's Court, Munsarim, Judge, Small Cause Court, Head Copyist, Munsarim, Civil Judge's Court, Munsarim, Munsif's Court and Munsarim-Reader, Additional Sessions Judge's Court.

The duties of these ministerial officers whom we recommend to be up-graded are no less onerous than those of Revenue Accountants and Judicial Assistants of the Collectorate, which posts have been upgraded after reorganization of the Collectorates. There seems no justification for not upgrading the abovementioned posts of civil courts which carry a good deal of responsibility with them and require to be manned by experienced hands having good knowledge of various Acts and rules and regulations.

Posts in Grade III—In addition to the posts already included in this grade, it should include the posts of Readers of Civil Judges, Judge Small Cause Courts and Munsifs, Third Clerk, Judge's Court, Sessions Clerks of District and Sessions Judges and Additional Sessions Judges, Suits and Appeals Clerks of District Judges, Miscellaneous Clerks of District Judges, Deputy Record-keepers, Deputy Nazirs and all Amins without any distinction. In our opinion, the work performed by the Amins is very important and there is no justification to keep any of them in the inferior grade. We accordingly recommend that all Amins should be kept in Grade III.

Grade IV—This grade shall include the remaining posts of Ahalmads in various grades, Assistant Nazirs, Assistant Record-keepers, Copyists, Librarians and so on.

Prior to the introduction of the 1947 scales there were various posts with fixed salaries without a time-scale, with the result that the promotion of a clerk from one post to the next higher post meant a substantial increase in his salary. That circumstance provided some incentive at least to a member of the ministerial staff to put his best in the job in order to be entitled to promotion to the next higher post. That system, however, came to be abolished since 1947 pay scales came into force with the result that sometimes the increase in the salary of an incumbent at the time of promotion from one grade to the next higher was often only nominal and in many cases even illusory. Experience has shown that this change has to some extent killed the incentive of a clerk to give his best with the result that efficiency has to an extent at any rate gone down. The Committee, thus, feels that while adhering to the time-scale of pay which has its own value and attraction for the employee, there should be some immediate monetary gain guaranteed on promotion from one

grade to the next higher. It is accordingly proposed that whenever a member of the ministerial staff is promoted from one grade to the next higher his pay should be fixed according to the rules as they obtain subject to a minimum increase of Rs.10.

Fixation of pay on promotion.

Stenographers—It has been the common experience of any one who has had occasion to employ a stenographer that one could not get a stenographer for anything less than Rs.100 per mensem plus dearness allowance. The existing starting pay of Rs.75 per mensem for stenographers of Civil Judges was, in the opinion of the Committee, thoroughly inadequate and considerable difficulty is felt in obtaining anything like efficient stenographers on that salary. In the opinion of the Committee there should be a uniform scale for all stenographers employed in courts subordinate and that their scale should be Rs.100 —5—150—E.B.—10—200—E.B.—240, exclusive of dearness allowance.

Pay of Stenographers.

The recommendations which the Committee has made above should, in their opinion, apply equally to all subordinate courts—whether civil, revenue or criminal—and that the gradations which have been indicated above should be made applicable *mutatis mutandis* to revenue and criminal courts.

Above recommendations to apply to officials of Criminal and Revenue Courts.

CHAPTER XIX
HONORARY MAGISTRATES AND NYAYA PANCHAYATS

Criticism of honorary magistrates.

The evidence which the Committee had before it clearly showed that the institution of honorary magistrates never inspired the confidence of the people, nor did this class of magistrates, by and large, perform their functions with much credit. A large majority of the people have expressed the view that the institution has outlived its utility and should be abolished and this would increase efficiency and eliminate delays in the disposal of those cases which are triable by these courts. There was a general feeling that in many cases right type of persons are not selected for appointment as honorary magistrates. There was justified criticism about these magistrates generally not having any fixed hours or days for work which caused considerable harassment to the litigants whose cases were sent on for disposal to an honorary magistrate's court. Some people expressed the fear that there was corruption also prevalent in these courts.

Usefulness of honorary magistrates.

There was, however, a substantial volume of opinion which was in favour of retaining the institution of honorary magistrate. It was stated that honorary magistrates are capable of serving a very useful purpose in relieving the paid magistracy of a large number of petty criminal cases, particularly in the larger districts. Experience shows that there are some honorary magistrates who discharge their duties with ability and devotion. So the fault could not lie with the institution of honorary magistrates but it lay with the persons who were selected to do the job.

Honorary Magistrates can relieve regular criminal courts to an appreciable extent.

On a careful consideration of the entire material before it and the views expressed on both sides, the Committee was of the opinion that the institution of honorary magistrates could be a useful one. If there could be proper selection of men then these magistrates could very adequately relieve the regular criminal courts of quite an appreciable volume of work and thereby reduce the pressure on the regular courts. In the year 1956 there were 357 honorary magistrates in this State and they disposed of nearly 25 per cent. of the criminal work. This contribution was no insignificant contribution.

Careful selection of honorary magistrates is necessary.

It is, however, essential that in order to make this institution really useful great care was exercised in selecting the personnel. It was necessary that persons enjoying the respect of public and of known integrity were appointed as honorary magistrates. Selection on political or other extraneous considerations was likely to bring honorary magistrates as a class into disrepute.

Rules of selection examined.

The State Government has framed elaborate rules for the selection of persons for appointment as honorary magistrates. Under these rules there is a committee which makes the selection The committee, as the rules stand, consists of the Dis-

trict Judge, the District Magistrate, a member of the Bar elected by the District Bar Association and six non-officials, who are not to be practising lawyers, nominated by Government. In the opinion of the Committee, nine is too large a number for a committee entrusted with the task like selecting persons who may be fit for appointment as honorary magistrates. In our opinion there should not be more than five persons on this selection committee. These five persons should be the District Judge, the District Magistrate, the President of the District Bar Association (where there are more than one District Bar Association, these Bar Associations together should nominate a person to sit as a member of this committee) and two other non-officials, one of whom should be the Mayor of the Corporation or the Chairman of a Municipal Board of the town and the other the President of the District Council (Zila Parishad).

Smaller selection committee recommended.

What is important is that the right type of men should be selected. In making selection particular stress should be laid upon the reputation of the person to be selected and his freedom from pecuniary embarrassment. It has rightly been provided in these rules that any person who has held any judicial post under the Union or the State Government should normally be given preference in the matter of appointment as honorary magistrate over a person who has not held any such post. It is a sound principle incorporated in these rules to debar practising lawyers, members of political parties, President or members of Cantonment Board or Gaon Panchayat, President or members of the Municipal Board or District Board or Notified Area or Town Area Committee from being appointed as honorary magistrates. In our opinion, the High Court should also have an effective voice in the final selection of honorary magistrates; this would greatly enhance public confidence in these courts. In this connection it would be of interest to quote the following observation made by the Law Commission in their 14th Report at page 718 with which we fully agree:

Qualifications and disqualifications of person to be selected.

High Court should also have an effective voice in final selection.

> "It would be preferable if the appointments are made by the State Governments with the concurrence of the High Courts."

TRAINING

The rules framed by the State Government further provided for a short period of training of about three months to a person appointed for the first time as an honorary magistrate unless he has had previous experience of law and procedure in criminal courts. After familiarising himself with the Penal Code, the Criminal Procedure Code and the Evidence Act under the guidance of a senior stipendiary magistrate, he has to watch the progress of trials in courts, to take notes of evidence and to write out judgment for the approval of the Magistrate. In our opinion, it would be useful if in addition to this training with the stipendiary Magistrate, an honorary magistrate is further required to attend a few cases in the court of a Sessions Judge or an Assistant Sessions Judge, to take notes of evidence, write out judgments and submit them to the Judge for his approval.

Training, Supervision, guidance and control of Honorary Magistrates.

The honorary magistrates, like other Magistrates, should sit during fixed hours and should be provided with the necessary staff. There is already a provision in the revised rules regarding the appointment of honorary magistrates that the District Magistrate shall fix the days on which every honorary magistrate and bench of honorary magistrates shall hold court and the days so fixed by the District Magistrate shall not be changed without his previous sanction. Every honorary magistrate or bench of honorary magistrates is required to maintain an attendance register in which the time of arrival and departure should be noted by him or them. This register should be submitted every month to the District Magistrate for his perusal. The Committee only wants to emphasise that these rules should be strictly observed by the honorary magistrates.

Honorary Magistrates to have fixed hours for holding courts.

Attendance register.

Under the rules the District Magistrate and the Sub-Divisional Magistrate are required to inspect every honorary magistrate's court at least once a year. These courts are also expected to be inspected by the Sessions Judge. But in actual practice such inspections are rare. An effective supervision and inspection by the District Magistrate and the Sessions Judge over these honorary courts can keep them on the right track so as to serve the cause of administration of justice better and eliminate the evils of corruption, harassment and delays prevalent in such courts.

Inspection of the courts of honorary magistrates.

NYAYA PANCHAYATS

Public opinion as could be gathered from the replies to the questionnaire issued by the Committee is highly critical of Nyaya Panchayats. Revisions against Panchayati Adalats have disclosed not only partisanship but have shown a very unsatisfactory state of affairs prevailing in some of these courts. Giving judgment in collusion with one of the parties and without informing the other, ante-dating or changing a judgment, tampering with the record and other malpractices on the part of the Sarpanch and Panches of these Nyaya Panchayats are not very uncommon. It was brought to our notice that Panches were not generally free from corruption and sometimes they encouraged litigation to harass those who were not in their party and sometimes they did this even for unlawful gain. It was alleged that the absence of lawyers from these courts leaves them free and fearless to behave arbitrarily and occasionally in a dictatorial manner. Often the Panches act under local and caste influences in deciding cases. It was said that the recent enlargement of their civil jurisdiction had to an extent aggravated the evil. Many persons think that Nyaya Panchayats have failed to function as judicial bodies and it was really time to reconsider the whole matter.

Public criticism of Nyaya Panchayats.

There were others who thought that the decentralisation of courts which was brought about by Panchayat Raj Act should not be scraped altogether but should be given some more trial. It was contended that it will take some time to bring a sense of justice and impartiality in the Panches so as to make them realise the magnitude of their duties. The framers of our Constitution recognised the importance of these village units

Opinion in favour of Nyaya Panchayats.

by embodying a directive principle of State Policy in Article 40 that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government.

Evidence given by the Director of Panchayat Raj regarding the functioning of Nyaya Panchayats.

The Committee, after carefully considering the views expressed for and against these village courts and other evidence collected by it, feels that much of the criticism made against these courts is justified. The Committee had the advantage of knowing the views of Sri Bhagwant Singh, Director of Panchayat Raj, U. P., on the working of these Nyaya Panchayats whom they examined as a witness and who also gave a note to the Committee embodying his own views about these Panchayats. Sri Bhagwant Singh frankly admitted that most of the defects pointed out above existed in the working of these Nyaya Panchayats. But according to him these defects and shortcomings existed on a small scale and the Nyaya Panchayats on the whole were doing good work to the satisfaction of the people concerned by providing cheap and fair justice. He gave the following figures in support of his views:

Year	Number of cases pending disposal from the previous year	Cases instituted or received from other sources	Total number of cases for disposal	Disposed of by Compromise	Decided on merits after hearing parties and delivering Judgment	Otherwise disposed of e. g. by transfer exparte or dismissal for default	Total disposed of	Pending at the close of the year	Revisions filed	Revisions accepted
1	2	3	4	5	6	7	8	9	10	11
1957-58	36794	165322	202116	69058	39693	59662	168413	33703	5085	2058
1958-59	33703	163071	195774	67823	33145	54077	155044	40729	5476	2629
1959-60	40729	159774	200503	69085	35078	52889	156972	43531	6743	2952

These figures show that the Nyaya Panchayats are capable of serving a useful purpose and if the personnel of these village courts is properly selected and trained, much of the criticism that is levelled against them at present can be removed.

Nyaya Panchayats capable of serving useful purpose if personnel is properly selected.

The decision of the Congress party in the last elections of Gram Panchayats not to contest these elections on party lines was a step in the right direction. But that alone was not sufficient to achieve the desired object so far as Nyaya Panchayats are concerned.

There are at present more than 8,500 Nyaya Panchayats in the State. The jurisdiction of a Nyaya Panchayat extends to an area covered by several Gaon Sabhas. The number of panches in each Nyaya Panchayat to be drawn from each Gaon Sabha has been fixed in accordance with rules framed on the subject. Originally the Panches of Nyaya Panchayats were elected directly by the adult members of the Gaon Sabha like the panches of the Gram Panchayat. Subsequently the law was amended and now the number of panches of the Nyaya Panchayats to be drawn from the Gaon Sabha concerned is added to the number of the members to be elected to the Gram Panchayat. The total number of members is then elected by the Gaon Sabha. Out of this total number of elected panches, the required number of Nyaya Panches is nominated by the District Magistrate. One advantage in this amended system is that it gives some discretion to the District Magistrate to select out of this body of elected panches a few persons whom he considers as fit to discharge the duties of a panch of Nyaya Panchayat. One of the qualifications prescribed for a Panch of a Nyaya Panchayat under rule 85 is that he should be able to read and write Hindi in Devnagri script. It is said that this procedure of election-cum-selection satisfies the democratic principle of the people having a voice in the selection of the persons in whom they have confidence and also the principle of selection of qualified persons for filling in judicial posts in the lowest rung of the ladder.

Existing system of election-cum-selection of Nyaya Panches examined.

The procedure is, however, criticised on the ground that the principle of election should not be introduced at all in the selection of panchayats which are meant to administer justice. This argument is not without some force, but the difficulty is in finding a suitable alternative. If the District Magistrate or the Sub-Divisional Officer or any other authority authorised to make a nomination is given a discretion to make a selection from the entire field of eligible persons residing in the Gaon Sabha, the difficulty would arise that he will have to depend upon the reports of subordinate officials of the lowest rung, and in the ultimate analysis it might prove to be a selection by a Lekhpal, Qanungo or a Panchayat Secretary. For the success of any scheme of decentralisation including the decentralisation of administration of justice it appears necessary to associate the people in the best possible manner. In these circumstances a device of making a combined election of the members of the Gaon Panchayat and of Nyaya Panchayat without indicating at the time of election whether one or the other of them would go to the Nyaya Panchayat and subsequently

Criticism of the existing system.

Difficulty in finding a suitable alternative.

Existing system may be retained as satisfactory.

selecting a few out of them with the requisite qualifications and considered most suitable to discharge the duties of Nyaya Panches is a satisfactory procedure.

Discretion of District Magistrate in making the selection not to be fettered by any advisory body.

It has, however, been pointed out to the Committee that there are difficulties in the way of the District Magistrate in making his selection of a few Nyaya Panches even out of this elected body of 30 to 40 persons. The District Magistrate is not expected to know personally about the qualifications and merits of each of these persons so elected. It was suggested that the District Magistrate should be asked to consult an advisory Committee of the people before making his selection and we understand that there are some instructions of Government in regard to this matter. It was also suggested that members of the legislature, President of the Zila Parishad, Pradhans of Gaon Sabhas concerned could be taken on this advisory committee. We considered this suggestion carefully, and we are of the opinion that the discretion of the District Magistrate in making the selection should not be fettered in the manner suggested. Members of the legislature are drawn from one or the other political party and with the best of intentions, it would be difficult for them not to support the candidates having leanings towards the party to which they belong. The same thing can be said with regard to the President of the Zila Parishad. In our opinion it would be advisable to leave the discretion to the District Magistrate. He may, if necessary, consult the local opinion through the Pradhan of the Gaon Sabha or other respectable members of the village, if any, and may also consult his subordinate officers before making selection of Nyaya Panches. What is important is that the selection should be made on merits and not on any other consideration.

Training of Nyaya Panches.

It was necessary that after appointment Panches should be trained for a period before they were actually called upon to perform their duties. This training should be given under the direction of an experienced officer familiar with the law and its application. The period of training should extend from two to three months. During period of training the panches should be made familiar with the fundamental principles of natural justice. Rule 86 framed under the Panchayat Raj Act provides that every panch at the first meeting of Nyaya Panchayat shall take oath of office in the prescribed manner. In our opinion it is sound in principle, because taking a formal oath may have some effect on the moral waywardness of some individuals.

Supervision.

For the successful working of these Nyaya Panchayats it was essential that there should be proper supervision and control over them. At present the Panchayat Raj Inspector, the Assistant Panchayat Raj Officer and the Panchayat Raj Officer are expected to supervise these Nyaya Panchayats. But besides Nyaya Panchayats these officers have also to supervise Gaon Panchayat which is the main administrative body of the village self-Government. Naturally these officers are not able to devote as much time to scrutinising the working of these Nyaya Panchayats as was necessary for their successful functioning. In

our opinion, there should be a separate officer of the status of the Assistant Panchayat Raj Officer who should be a law graduate with some experience in the administration of justice. This officer could be entrusted with the training of the Panches as well as the supervision and control of these courts in their day-to-day working. As many Nyaya Panchayats as can be conveniently supervised by an officer should be placed under him.

A separate Assistant Panchayat Raj Officer who should be a law graduate recommended to supervise Nyaya Panchayats.

The Sub-Divisional Officer and the Munsif should also periodically inspect the working of these Nyaya Panchayats. They should pay special attention to the complaints made against these Nyaya Panchayats and also look to the difficulties of the panches and give them proper guidance.

Sub-Divisional Officer and Munsif to inspect Nyaya Panchayats.

We are informed that except a Secretary these Panchayats have no clerical or process-serving staff. In many cases they have no proper accommodation for holding courts. They have no fixed days or hours of work. In our opinion, these difficulties of Nyaya Panchayats should be looked into by Government and proper provision made for them. A Nyaya Panchayat should have its own process-serving staff. Often cases in these courts are delayed because they have to be adjourned for want of quorum. It should be prescribed by rules that any Panch who fails to attend without sufficient cause on more than three occasions should be liable to be removed. There should be fixed days on which these courts should sit for disposal of cases.

Difficulties of Nyaya Panchayats to be looked into and they should be provided process-serving staff.

Want of quorum.

In case of misconduct a Panch or Sarpanch should be liable to be removed by the District Magistrate with the concurrence of the District Judge.

Removal of Panch for misconduct.

It was suggested that these Nyaya Panchayats should act only as conciliation bodies and that their functions should be limited to their bringing about a conciliation of the disputes. We gave this matter our anxious consideration and we have come to the conclusion that merely having a body for purposes of conciliation was unlikely to subserve the larger interest of the village community as also was going to prove ineffectual in training up the village community to have a decision in respect of a dispute by judges either elected or nominated from amongst the village community itself. We are, therefore, of the opinion that the Nyaya Panchayats should have the power to adjudicate upon causes in the event of their failure to bring about a conciliation.

Nyaya Panchayats not to be only conciliation bodies but to have power of adjudication.

The Committee had the advantage of scrutinising the statistics which was placed before it by Sri Bhagwant Singh, Director of Panchayat Raj, and for which the Committee expresses its gratefulness: from the scrutiny of these figures we have come to the conclusion that these Nyaya Panchayats have in a large number of cases brought about conciliation of disputes. This role of the Panchayats has been rather heartening.

Statistics show that Nyaya Panchayats bring about conciliation in large number of cases.

In our opinion with the modifications and safeguards suggested by us earlier in this Chapter the Panchayats should have a longer trial before it was possible to condemn them in any sense.

CHAPTER XX

WORKING CONDITIONS AND THEIR RELATION TO EFFICIENCY

Effect of working conditions on efficiency.

Just as the efficiency of a factory worker depends largely on his working conditions, his entire environment, the sanitary conditions of the factory premises where he works and the tools with which he works, in the same manner the efficiency of officers presiding over courts and the staff working under them is also influenced to a large extent by the surroundings and the conditions in which they are required to work. A judge working in a dark, dingy and ill-furnished court-room can rarely produce his best—it is a surprise that he can produce the work that he does. Similarly, a clerk sitting in an ill-ventilated office amidst broken furniture called upon to produce work beyond his capacity at a time when his wife or child is ailing at home and having no money to buy medicines for them, can hardly be expected to yield any thing good. Such an individual is very likely to succumb to temptations which come in his way easily. It is, therefore, necessary that officers and the staff working in subordinate courts should be provided with reasonable facilities and amenities so that they may perform their functions in surroundings which are conducive to human dignity rather than destructive to it.

Importance of court-rooms.

Court houses—A court house is regarded as a temple of justice where one goes for the vindication of his rights and for the redress of his grievances. It is necessary, therefore, that a court house should at least to some extent justify that conception. There can be no doubt that a court room should provide sufficient accommodation and reasonable facilities not only for the Judge and the staff working under him but also for those who go there on business: the litigants, their lawyers and the witnesses.

Some court-rooms very small, dingy and illventilated.

The investigations made by the Committee have shown that many of our court-rooms and the facilities provided therein are far from satisfactory. At several places, for example, at Almora, Agra, Hardoi, Faizabad, even at Allahabad some of the rooms in which Magistrates held their court were no bigger than $10' \times 7'$, $15' \times 12'$, $15' \times 10'$. Area varying from 70 sq. feet to 180 sq. feet had to accommodate the Magistrate on a dias, his Reader, his Ahalmads, the parties, their witnesses and their lawyers. The spectacle cannot be adequately described. Sardeens are often better packed than the sweating humanity on a summers' day in some of these court-rooms. Taking a deep breath in these rooms was often difficult because of many odours and the dust-laden mustiness of the room itself.

With the increase in work, the number of additional and temporary courts has largely increased during the last 10 years and this increase in numbers has created serious problems, one such problem being the problem of finding accommodation. Sometimes additional courts had to be accommodated in rented buildings or in improvised enclosures which cause great inconvenience to the members of the Bar, litigant public, presiding officers and their staff. Government has constructed some new court buildings and extra court-rooms at some places during the last 5 or 6 years but, generally speaking, the building programme, if there was one, has not been commensurate with the needs. The High Court has been drawing the attention of Government from year to year in annual reports on administration of justice to this unsatisfactory state of court buildings and it is a matter of regret that Government has not given the attention that this matter deserved. We recommend that a phased programme of building court houses within the next 5 years should be drawn up by Government in consultation with the High Court and necessary funds should be allotted for that purpose. The ideal to be achieved should be that every presiding officer whether he be a Munsif or a Magistrate should have a reasonably spacious, well-ventilated court-room in clean surroundings where he could devote himself seriously to his work. The presiding officer should have a retiring room with an attached bath-room. There appears no justification for denying this facility to the litigant public for whose benefit the judicial machinery exists and particularly when Government has a surplus revenue from the administration of justice.

Large number of court-rooms required due to increase in the number of courts.

Phased building programme of court-rooms recommended.

Furniture—The rooms should be properly furnished so that there may be enough seating facilities for lawyers, parties and their witnesses. In many court-rooms the number of chairs, benches and tables as provided for at present is thoroughly inadequate. The furniture was found by us in a large number of court-rooms broken and in bad shape.

Furniture.

Offices—Not only court-rooms but the offices also should be of proper dimensions and should be properly equipped. At several places the ministerial staff of courts work in small rooms which were originally meant for storing of forms, in some places even a bathroom was utilised for this purpose. The furniture which exists in some of these offices can hardly be called furniture—the stuff is not only outmoded but is often a curious ramshackle. Modern efficiency and speed require a change in the accommodation, furniture and the tools. Moghul methods of transacting business cannot yield the desired results in this atomic age in any sphere of activity.

Offices.

Offices of courts to be properly furnished.

Library—Law books are to a judge what tools are to a worker. Our investigations have, however, revealed that in most of the districts the courts have very poor library. Many courts were not equipped with even those books which they need for frequent reference. Judicial officers had to rely upon the members of Bar for making the necessary books available to them. Members of the Bar very often found it difficult to spare their personal books for the use of the Judicial Officer with the result that the Judicial Officer was greatly handicapped in his work, often lack of books caused unnecessary delay in the decision

Library of Presiding Officers.

of cases. In our opinion, it is very necessary that each court should have a small library of at least important annotated text books which are frequently required. Every court should have a set of the bare Acts, both central as also State Acts. It is for the District Judge and the High Court to decide what additional books are necessary for each court. Every effort should be made to keep the books and the statutes up to date. There is so much of change in the laws in recent times that unless care is taken to keep acts in courts up to date, mistakes are bound to occur. The necessity of books in the courts of the Magistrates is even greater because at present most of these courts do not possess any law books.

District Law Libraries.

Law Libraries in the district courts are, by and large, very poor. These do not possess adequate number of books which are of frequent reference. Some libraries do not even have reasonably recent editions of law books. The *Gazettes* in most of the libraries lie unbound for years for want of funds, this makes their use highly inconvenient. The law reports and other journals also lie unbound for several years in some of the district libraries. In some judgeships there is no separate post of a librarian which creates difficulties in maintaining the district library in a proper shape.

In our opinion, every judgeship should have a properly equipped law library where all necessary books of reference required by judicial officers should be available. Government should make provision for meeting the expenses of these libraries including the binding of *Gazettes* and law reports.

The Government should regularly and promptly supply to each district library a sufficient number of copies of enactments passed by the Legislature. We further suggest that if any amendment is made in any existing enactment or rules, printed copies of the amendment should be provided to every court with expedition.

Separate post of librarian in those judgeships where no such post exists.

A separate post of librarian should be created in those judgeships where no such post exists at present. The librarian should be responsible for maintaining an upto date catalogue of the books and keeping the library in proper order. It should be his duty to issue books whenever required by a judicial officer and to collect them back after such use. It should be his duty to put in "correction slips" in the statutes as soon as they are received.

The provision of an up to date and well-equipped library of law books in every district would greatly help the production of a better quality of work by the subordinate judiciary. If the quality of decisions of the courts below improves then the pressure on courts of appeal was likely to ease greatly.

Some law reports should also, in our opinion, be supplied to District Magistrates who should circulate them among the Magistrates subordinate to them.

Lunch room—In civil courts, by and large, judicial officers have a separate room which they can use as their lunch room. There are, however, no such separate chambers provided to a large number of Magistrates. In most of the districts, Magistrates have a common lunch room. These common lunch rooms came in for a good deal of criticism both at the hands

of the Bar as also from the public at some places. There appeared to be a sort of suspicion in some places against these lunch rooms. Fear was expressed that these lunch rooms were utilised for the purpose of influencing judicial discretion of Magistrates by senior Magistrates. The commonest criticism against lunch rooms, however, was that they were directly responsible for waste of time. Magistrates never kept any regular or common lunch time, so that members of the Bar as also the litigants were greatly inconvenienced even though there were rules in regard to these matters. The Committee is of the opinion that it was very necessary that every thing connected with the administration of justice should be above suspicion so that this common lunch should be abolished: but if a common lunch room is to continue in certain places for want of accommodation then every effort should be made to see that Magistrates using these common lunch rooms should devote no more time than was permissible for the lunch break. Every effort should be made to see that the criticisms that have been made against the common lunch room could no more justly be made.

Common lunch room of Magistrates and criticism against it.

Residential accommodation for officers and staff—We heard persistent complaints from judicial officers that they experience considerable difficulty in obtaining suitable residential accommodation. We were told that in the matter of allotment of houses, judicial officers received a step-motherly treatment at the hands of the executive. There have been cases when a judicial officer had to live in his court chamber for weeks before he could get any residential accommodation. We need hardly mention that unless a judicial officer is able to secure reasonable accommodation for himself and his family, his mind cannot be at ease and he cannot devote himself wholeheartedly to his work. Sometimes, a judicial officer has to incur obligation in the matter of obtaining accommodation though most grudgingly of prospective litigants or of lawyers practising in his court. Such a situation puts the independence of a judicial officer in peril. The point that the Committee wish to make is that judicial officers should not be placed in such a situation in the matter of getting residential accommodation as was likely to either affect their independence or give cause for suspicion. The problem of finding residential accommodation for judicial officers had in the setting pointed out above a special significance. We think it necessary that Government should provide judicial officers with suitable residences. We suggest that a five-year building programme be chalked out by Government for the construction of residential houses for the members of the judiciary and residential quarters for their staff.

Residential accommodation for Judicial Officers.

Leisure and recreation—Under the existing rules judicial officers doing Civil work have to work in court for five hours excluding the lunch interval while judicial officers doing criminal and revenue work are expected to sit in court for 5½ to 6 hours. In our opinion the working hours in court for these officers should also not be more than five after excluding lunch interval.

Leisure and recreation.

Judicial Officer has to work outside court hours also.

The criticism that was made in certain quarters that these working hours were less as compared to other Government offices was not justified. The comparison is unfair for it has to be remembered that apart from work in court judicial officers have to do a great deal of work outside court hours in writing their judgments, studying the files and perusing rulings. A trial judge is expected, before the trial commences, to know the case of the parties by studying the pleadings, etc. All this takes on an average two to three hours of work outside court hours. It should also be borne in mind that the judicial work calls for more concentrated attention than many an another kind of work. We are of the opinion that it will not be conducive to good work to add to the actual working hours in court of a judicial officer.

Some leisure and recreation necessary for efficiency.

It has to be clearly understood that a certain amount of leisure and recreation was absolutely essential for efficiency. Judicial officers are expected to keep abreast of the changing laws and to know the latest pronouncements of the Supreme Court and the High Court; for all this they must have leisure and also opportunity.

Habit of reading and periodical seminars.

Habit of reading and periodical seminars—We suggest that a habit of reading should be inculcated in all judicial officers. Its value should be impressed on young officers during their period of training, and through social contacts by senior officers. Periodical seminars on legal topics should be organised in which besides judicial officers, members of the Bar may also be invited to participate.

Quantitative standards of work to judge efficiency.

Whether any quantitative standard of work should be prescribed to judge efficiency—The High Court has prescribed vide its General Letter no. I/VI—H—14, dated August 13, 1958, a standard of work for judicial officers of civil courts. Similarly, the Government and the Board of Revenue have prescribed standards of work for Magistrates and Judicial Officers for criminal and revenue cases. The standards lay down the minimum quantity of disposal expected of a judicial officer within a given time. Every officer tries to see that his output does not fall below the prescribed standard.

Criticism of quota system.

Public opinion as reflected from the replies to the questionnaire issued by the Committee and the oral evidence recorded by it was highly critical of this system of prescribing minimum standards of work for judicial officers which was popularly known as "quota system".

Prescribing standards of work, whether maximum or minimum, showed a distrust of an officer. The question obviously arises whether it is proper both on psychological as also on practical grounds to distrust judicial officers to whose care, under the law, the destinies of men and matters have been entrusted. In justification of the quota system it was pointed out that such a quantitative test was a salutary check on the vagaries of the individual officer. It was contended that a yardstick was necessary to judge the comparative efficiency of judicial officers and to check any slackness on their part.

We feel that though quantative tests of work are necessary and fulfil an important purpose, a blind reliance on it was likely to defeat its very purpose. The main defect of this so called quota system was that an insistence on the disposal of a certain number of cases often resulted in big and complicated cases being put aside. It led to a tendency to dispose of easier cases in order to show greater output. The result was that files got congested with older and heavier cases and passed on undisposed of from one judge to another. In some cases quality also was sacrificed to quantity; and disposals were made without fair and adequate hearing of a matter.

Quality not to be sacrificed for quantity.

The idea with which the prescribed minimum was fixed was not to sacrifice quality to quantity; the general letter of the High Court referred to above specifically emphasises that the merit of an officer will be judged by the quality of his work and that in no circumstance was quality to be sacrificed to quantity. It is also specifically mentioned in this letter that if the amount of work of an officer falls short of the prescribed minimum, the circumstances (which will be fully considered) should be clearly stated in the remarks column of the quarterly statement. The general letter warns officers against postponing old and complicated cases in order that they might be able to show that they had disposed of more work. It is thus evident that the principle underlying the fixation of a prescribed minimum was not to make it rigid, but unfortunately in practice it has worked into a rigid rule of thumb which has brought about many of the evils pointed out above.

Existing standards make no proper allowance for time devoted to inspections.

A perusal of this general letter shows that it makes no allowance for the time that may be taken for proper supervision of the staff by the presiding officers and of the staff and subordinate courts by the District Judges. It also loses sight of the fact that the nature of work is not the same in every district and that very often the disposal of cases which have become old takes much longer time than some of the newer cases. Experience has shown that in some districts cases are of simpler nature than in others. In some districts the lawyers are more lengthy in their cross-examination and arguments than in others. All these factors have their effect on the disposal of cases. So it does not appear desirable to fix a common standard of work for all districts. Again when the pending file is heavy the time taken for disposal of miscellaneous applications is much more than five hours allotted in a week for doing miscellaneous work, further there does not appear to be any credit given for the disposal of execution work. The result is that presiding officers do not devote sufficient time to execution cases which leads to delays, harassments and corruption. In our opinion a reassessment and a reorientation in regard to the output of work required on an average by a judicial officer was very necessary and we have no doubt that when the attention of the High Court was drawn to this matter it would take the necessary steps.

A District Judge has to devote at least one hour daily to administrative work and about half an hour a day for disposal of bail and other miscellaneous applications. We have recommended elsewhere that the District Judges should exercise

better control and supervision over the staff of the subordinate courts through inspections, surprise visits and scrutiny of the periodical statements submitted by the subordinate courts. It is necessary to lessen the load of judicial work of a District Judge so that he may get enough time to devote himself to his administrative functions or to relieve him of some of the burdens of administrative work by the appointment of a Registrar.

Standard prescribed for Magistrates much too heavy.

So far as the Magistrates and Assistant Collectors are concerned, the standard of work prescribed for them is much too heavy and cannot be attained by an average officer, without sacrificing the quality of work. In our opinion, this standard should also be suitably revised. The prevalent corruption in courts is more in magisterial courts than in civil courts. One of the main reasons for it is that the Magistrates cannot make enough time to exercise effective supervision and control over their subordinate staff. The standard of work for the Magistrates should be fixed in such a manner as to allow them some time for supervision and control of their subordinate staff. The revised standards must make suitable allowance for the time devoted by the presiding officers to the inspection and supervision of their offices.

Revision of standard necessary.

Before we conclude this Chapter, we should like to refer to certain other matters which have not been specifically mentioned but which would, in our opinion, be conducive to greater efficiency and dispatch.

Stationery and forms etc.

We have noticed that the quality of the stationery which was supplied, by and large, to subordinate courts was of a very poor order. Brown paper on which Magistrates and Munsifs and Civil Judges were expected to record statements of witnesses was definitely detrimental to good and legible writing. The speed with which one could write on good paper could not be maintained on this brown paper that was supplied for use to courts subordinate. The saving which Government was likely to make over the quality of paper supplied was insignificant, in our opinion, compared with the loss of time, energy and efficiency which resulted from the actual use of the brown paper. The quality of the ink, the quality of the pencil, both black and red and blue, as also the quality of the nibs had deteriorated so much that there was not only wastage of material but wastage of time and energy in using these articles of stationery. We may point out here that there was no dearth of good indigenous stationery in the country. What appears to have gone wrong was the attitude which the purchasing department appears to have in regard to making purchases of stationery which was to be distributed to courts subordinate. In our opinion, a complete reorientation of the outlook of the stationery purchasing department was necessary.

Short supply of forms.

Reference may also be made here to another difficulty which is experienced very largely by courts subordinate, lawyers and the litigant namely the inadequacy of and the bad printing of forms which have to be used for certain prescribed purposes. Sufficient supplies are not kept of either the saleable forms or

forms that are made available free. In recent years there has been a tremendous shortage of water-mark paper. No one appears to realise the loss that is caused to Government by maintaining inadequate supplies of saleable forms and water-mark paper. It is a matter of regret that the Superintendent, Printing and Stationery never appears to bother about these matters or to keep a check on these. We have been forced to make a pointed reference to these shortcomings because these have adversely reacted on the efficiency of courts subordinate.

Hot weather arrangements in courts are poor.

The hot weather arrangements in courts subordinate for judicial officers, their court-rooms and office, for the lawyers, for the litigant public were in our opinion, thoroughly inadequate. It must be realised that any money spent on providing creature comforts during the hot months was conducive to better work. We have earlier emphasized the fact and we do so again that one cannot expect the best from any one unless the worker, whatever his state or strata, is provided with proper working conditions.

CHAPTER XXI
DO'S AND DONT'S FOR JUDICIAL OFFICERS

We have earlier indicated that a certain amount of training, direction and guidance was essential for a young officer to fit him for the job.

It cannot be doubted that mere intelligence or mere knowledge of the law was not enough to guarantee that a particular officer possessing only these two qualities was bound to prove a success, for success depended to a very large extent on a knowledge as to how to conduct himself in court and out of court: it also depended on how the officer tackled the little day to day procedural and administrative problems that faced him while administering justice. The knowledge which a young officer acquires now in regard to these matters is mostly acquired by a process of trial and error. Though the process of acquiring knowledge through trial and error is sometimes a sure way of learning things, it is still the hard way, and it is a way which is wasteful of energy, and in the sphere of judicial business often times may prove dangerous. Therefore, we thought it desirable in a general way to indicate some of the broad things which should be made available as, if we may put it that way, do's and dont's for the young officer: it is in this light that we are going to say what we propose to in this Chapter.

Necessity for laying down do's and dont's for young officers.

Control and supervision of subordinates necessary.

The first thing which a young officer has to learn is to control his subordinate staff, and in that process of control to acquire the capacity of getting the best out of his staff. Members of the ministerial staff of the courts are, in the nature of things, the first persons to come in contact with the litigant public and they, therefore, have many opportunities of either fleecing or causing harassment to the litigant if there is no adequate supervision over them. Control of the staff is, therefore, absolutely necessary and our investigations have indicated that much of the prevailing corruption and harassments and even delays in the courts below can be traced to the inadequate supervision and control exercised by presiding officers over their subordinate ministerial staff. We, therefore, thought it necessary to emphasise this aspect of the matter.

At another place we have stressed upon the necessity of imparting intensive training to the new entrants in judicial service: we have also expressed the view at another place that a certain amount of "in-service training" was also necessary.

Qualities which a good judicial officer should acquire.

The judicial officer, so far as the litigant public and the members of the Bar are concerned, functions when he is in court. His attitudes, his behaviour, his knowledge of the law and his acquaintance with the case and his competence in deciding it determine his utility and reputation. Patience tempered with despatch, sympathy tempered with firmness are some of the virtues that a successful judicial officer acquires

through experience. The sooner a young officer acquires these qualities the better for him and for the judicial administration.

Punctuality.

Punctuality so far as his sittings in court are concerned is also a virtue which, the judicial officers must know, is greatly appreciated by the litigant public as also the members of the Bar. The High Court has prescribed certain hours of sitting. It has also prescribed a break for lunch. Judicial Officers must sedulously adhere to these timings otherwise much harassment is caused to litigants.

Proper settling of cause-list very important.

The cause-list is another very important matter which unfortunately does not receive that amount of attention which it deserves at the hands of most officers, with the result that the cause-list on many occasions is settled by the Peshkar and this provides opportunities to the Peshkar to make illicit gains and it also provides opportunities to unscrupulous parties to manipulate dates to the disadvantage of their adversaries: both these are unsatisfactory and undesirable things. Judicial Officers should, without exception, settle the cause-list in their own hand and they must bring to bear upon the question of settling the cause-list a systematic and rational approach and should not perform this work in, what may be called, a haphazard fashion. There are certain well-known principles which must be remembered when settling a cause-list, and these we may briefly indicate as follows:

(*a*) More cases than can properly and conveniently be disposed of should not be fixed. A day's work should include only as many cases as can reasonably be finished on that day plus one extra case for unforeseen contingencies. The fear that the cause-list is likely to collapse is often an unjustified fear, for cause-lists are unlikely to collapse if judicial officers are firm, as they should be, in the matter of adjournments. Even if the work collapses on any day, the spare time can easily and even profitably be otherwise utilised.

(*b*) While fixing the cases in the cause-list the judicial officer should have some idea of the nature of the case and the time that a particular case is likely to take.

(*c*) If possible, and there is no reason why it should not be, members of the Bar appearing on either side should be consulted before a date is fixed in a case, so that they may not seek an adjournment on the ground that the date fixed does not suit them and this consultation can also assist the officer in making a correct estimate of the time that the case is likely to take.

(*d*) The main consideration in settling the cause-list should be the convenience of the litigant public. It causes great harassment and inconvenience to litigants and witnesses if the cases are repeatedly adjourned for want of time.

Rule 16, General Rules (Civil) and Rule 5, General Rules (Criminal) and para 10 of the Revenue Court Manual lay

down the procedure for the publication of the cause lists of the courts of various jurisdiction. These rules are:

Rule 16, *General Rules (Civil)*:—

"A weekly list, in the form subjoined, of cases fixed for hearing, prepared in legible Hindi and signed by the Munsarim of the Court, shall be posted on the last working day of the previous week in some conspicuous place in every court house. In the preparation of such list precedence shall be given to cases which are at hearing or have been already adjourned, and the order in which cases are entered shall not be departed from without the express order of the presiding Judge of the court.

Space shall be left in the list, at the head of the entries of each day for the subsequent insertion, if necessary, of adjourned cases.

In the fourth column it shall be noted in regard to each case for what purpose it is to be laid before the court: whether, for instance, for settlement of issues or for final disposal or for delivery of judgment."

Rule 5, *General Rules (Criminal)*:—

"A weekly list of cases fixed for hearing, in the court of a Magistrate prepared in legible Hindi, shall be posted on the last working day of the previous week in some conspicuous place in every court house. Space shall be left in the list, at the head of the entries for each day, for the subsequent insertion, if necessary, of adjourned cases. The cause-list shall in addition to showing the date on which each case has been fixed also indicate the purpose for which it has been so fixed."

Para 49, *Revenue Court Manual*:—

"A cause-list [B. R. Form no. 253/369—Hindustani] shall be prepared in every court either by the presiding officer personally or under his direct personal supervision, every fortnight, or at such shorter intervals as may be convenient, showing—

(*a*) the date fixed for the hearing of each case.

(*b*) the number and description of the case,

(*c*) the names of the parties,

(*d*) the purpose for which the date has been fixed, and

(*e*) the place at which the case will be heard or if the case will be heard in camp, the place at which it will probably be heard.

NOTE—A course which has much to commend it is the setting apart of certain days in the week exclusively for judicial work. Officers must decide themselves whether to adopt this arrangement or not, but they will do well to remember that there are obious advantages in fixing and notifying certain days on which the public will have a reasonable certainty of finding them in a position to take up cases at regular hours."

Para 50, *Revenue Court Manual*:—

"The cause-list shall be affixed in some conspicuous place in the court-house."

These rules provide a very adequate guide in the matter of publishing the cause-lists. The investigations of the Committee unfortunately indicated that these rules were observed more in their breach than in their observance. The litigant public

was put to a good deal of harassment owing to confusion regarding dates fixed by the court in particular cases, and this was largely due to inadequate publicity of the cause-list. We would suggest that it would be very useful if a weekly cause-list is drawn up at the end of each week and such a weekly cause-list is placed on the table which is used in court-rooms by lawyers and a copy of it is hung up outside the court-room inside a locked board with a glass facing so that the cause-list could be read without its being either tampered with or torn away by anyone. We observed that in certain courts the cause-lists were maintained in a most slovenly and illegible manner. This was unsatisfactory, for an illegible cause-list, for all practical purposes, was as good as there being no cause-list.

Transfer of cases.

Transfer of cases from one court to another should receive the personal attention of the officer empowered to order routine transfers: this business should never be left to the Peshkar or any other subordinate official.

Adjournments

We referred to adjournments a little earlier, but that was in passing. Adjournments are important matters, and they call for the exercise of judicial discretion. Adjournments could never be a matter of grace or a matter of routine. Adjournments in the very nature of things should be rare, but in actual practice in certain places we discovered that adjournments were granted as a matter of course for presiding officers expected adjournments to be asked for. For that purpose they made out a cause-list which was in a sense illusory for more cases were shown in the cause-list than could ever be disposed of. We have pointed out earlier that drawing up of an unnecessarily long cause-list caused harassment to the parties without any justification or without any compensatory advantage to anyone except those who seek for adjournments without adequate reason. In our view courts must realise that granting of adjournments was a serious matter and that adjournments should not be lightly granted. With the same end in view we have recommended an amendment to Order XVII, Rule 1 of the Code of Civil Procedure in an earlier chapter. If it becomes necessary to grant an adjournment then the next date should be fixed the same day and the parties should be informed forthwith of the next date and the necessary adjustments made in the cause-list of the date to which the case is adjourned.

Cases to be adjourned in advance when a judicial officer proceeds on leave.

It has come to our knowledge that an amount of harassment is caused by a judicial officer either suddenly going away on leave due to unforeseen circumstances or going away on leave of which fact he himself has adequate notice. Where a judicial officer proceeds on leave which he knows in advance, he should without fail give notice to parties whose cases are fixed for the dates when the judicial officer is to be on leave so that parties may not incur expense and trouble of coming to court. While informing the parties of the fact that their case would not be taken up on a particular date because the judicial officer would be on leave, the parties should also be informed of the next date that is fixed. There is unlikely to be much difficulty or trouble in doing this where parties are represented by counsel for giving information to the counsel would be information to the parties. There may be difficulty, however.

in cases where the parties are not represented. In such cases information may be sent by post—a post card may be quite enough—to the registered address of the parties. The Committee views this matter with some seriousness for it discovered during the course of its spot investigations that many litigants who came to court went back harassed and rendered poorer for having incurred an unnecessary expenditure in the journey to and from, because the presiding officer did not sit on the date for which they had been notified to appear. The Committee came across a case of a Magistrate of Agra where as many as forty cases had been fixed for a particular date on which date the Magistrate was not in court because he had gone to Moradabad to give evidence in a case for the State. The Magistrate knew of the fact that he had to appear as a witness in a criminal trial at Moradabad several days before he went and if he had the slightest imagination and a sense of responsibility to the litigant public then he could have in this particular case conveyed information to at least a majority of litigants in the cases which had been fixed to the effect that these cases would not be taken up on that particular date. As it was, no such information was given. What was still more harrowing to discover was that the reader of the court was not in court and that there was no machinery or individual who could inform these litigants whether there was any chance of the Magistrate making his appearance in court or the cases being heard and decided by any other competent court. The Committee members who were out inspecting discovered a pandemonium, as there was bound to be, in the *verandah* outside the Magistrate's Court. This kind of disposal of judicial work was anything but conducive to the fair name of justice, and, therefore, we could not but make a pointed reference to this rather typical example of want of sympathy and a sense of responsibility in certain Magistrates towards the litigant public. When, however, a judicial officer has to proceed on leave suddenly, it should be the duty of the officer-in-charge of his current work to adjourn all such cases as are not to be taken up and to have a notice indicating adjourned dates fixed therein, put up on the notice board latest by noon.

Framing of issues.

Before the court comes to examining witnesses it has, in civil cases, to frame issues after examining the parties as contemplated under Order X, rule 2, Code of Civil Procedure. This was a very important provision of law and courts should think themselves under an obligation to examine the parties with care as contemplated by Order X, rule 2. Issues in a case should be drawn up not in a haphazard or casual manner as is often done but after a careful consideration of the respective cases of the parties. Only such issues as really arose in the case should be struck. Unnecessary and irrelevant issues often prolong the trial and make it complicated: it also wastes money.

Recording of evidence from day to day, if necessary.

Examination of witnesses and recording of evidence forms another very important part of the trial of a case. Both the Code of Civil Procedure and the Code of Criminal Procedure lay down—Order XVII, rule 1, Proviso of the Civil Procedure Code and section 344 of the Criminal Procedure

Code--that once evidence has started being recorded then it should be continued from day to day until all the witnesses in attendance have been examined. We unfortunately discovered that there has grown a tendency, among criminal courts at any rate, of recording evidence piecemeal. This causes considerable inconvenience to the litigant public and we cannot but strongly deprecate this. We may, however, point out here that sometimes the recording of evidence in criminal cases has to be interrupted because of the failure of police witnesses to appear on the dates fixed. In order to counter-act this tendency we have suggested an amendment in sub-section (6) of section 251-A of the Code of Criminal Procedure which would enable a Magistrate to issue process to compel attendance of any witness if an application to that effect is made by the prosecuting agency before the date of hearing. With this power vested in the Magistrates the prosecuting agencies should make use of it, and should not be permitted to disrupt a hearing by pleading the absence of witnesses.

Arguments.

Before a case reaches the stage of judgment parties submit their arguments. Certain courts automatically grant time for arguments after the evidence has been closed. There really was no adequate justification in law for this and courts should be very careful in granting time for arguments. They should be particularly careful in not giving long dates for arguments. In this connection it would be interesting to notice the provisions of Order XVIII. Order XVIII prescribes the procedure for hearing of the suit and examination of witnesses.

Opening of case to be insisted upon.

In an earlier chapter dealing with suggested changes in the Code of Civil Procedure we emphasised the importance of the opening of case in strict compliance with the provisions of Order XVIII, rule 2. We also recommended an amendment to this rule so as to make it obligatory for a presiding officer to make a record of the salient points in the opening of the case by either party. We are of the opinion that if there is a proper opening of the case by the plaintiff's counsel and suitable statement of his case by the defendant's counsel before leading evidence as contemplated by Order XVIII, rule 2, the arguments addressed generally on the whole case by the counsel of parties after the conclusion of oral evidence can be curtailed appreciably and occasions when counsel of the parties request for an adjournment for this purpose would be rare. We, therefore, recommend that all presiding officers should insist on a strict compliance of the provisions of Order XVIII, rule 2, by the counsel of parties.

Judgment.

After the hearing of the case and arguments are over, the stage of judgment comes. In our opinion it would appear desirable that stress should be laid on the fact that judgment in a case should be pronounced as far as practicable soon after the hearing and that whenever a judgment is not delivered on the date on which the hearing closes then a date for such delivery of judgment should be fixed on the very day on which the hearing closes. We have made a recommendation to this effect in another part of our report and we have also suggested an amendment to Order XX, rule 1, Civil Procedure Code.

Presentation and disposal of interim applications.

Unfortunately a feeling has grown in the litigant public that unless they tip the ministerial staff their applications would not be put up before the presiding officer or, at any rate, not without delay. In order to remove this impression it is necessary that all presiding officers should give their personal attention to the handling and disposal of applications. There should be fixed hours for entertaining applications and disposing them. No application should, as far as possible, be disposed of in chamber. If there are fixed timings for the disposal of applications in open court the parties and their counsel can be present to press or oppose these applications.

Attachment before judgment and temporary injunctions etc.

Passing of orders relating to attachment before judgment and temporary injunction are serious matters which need careful consideration by presiding officers. In exercising his discretion in these matters a presiding officer has to be guided by certain rules and principles enunciated by the High Court and other superior courts in various rulings. It would be advisable for a young officer to carefully study some important rulings on these matters and keep those principles in mind when passing orders on applications for interim injunctions and attachments before judgment.

Reports by Munsarim.

Amongst the ministerial staff the Munsarim and the Peshkar play, by far, the most important role. The Munsarim has the responsibility of making certain reports on plaints, applications etc. These reports should be checked by the presiding officer with care. The presiding officer should also see that there is no delay in making the reports by the Munsarim and further that frivolous or unnecessary reports are not made. A Munsarim should be impressed that where it was possible for a party to correct a mistake about which he proposed to make a report, it should be got corrected rather than a report made and an order obtained of the court asking the party to make the necessary correction. This kind of dealing with omissions and technical mistakes was not only conducive to despatch but to an overall satisfactory progress of a case.

Checking of process servers' report.

Reports by process servers was another very important matter, and these should be examined very carefully. The examination of process servers' reports should be made immediately these reports are returned by the Nazir and where it is obvious that there has been no proper service, attempt should be made to have another service effected before the date fixed rather than wait till that date and then adjourn the case to another date. If a presiding officer finds that a process server did not do his work properly, he should draw the attention of the officer-in-charge of the Nazarat so that a delinquent process server was taken to task for it. This was necessary because there was a lot of corruption and delay in the process serving machinery of courts as we have already pointed out in another chapter.

Execution and miscellaneous matters.

Execution and miscellaneous matters must receive the same amount of attention and care which do regular cases. Saturdays are generally devoted to execution and miscellaneous matters. Often one day in the week is not sufficient for the purpose, with the result that there is a tendency to hurry through such matters which was detrimental to proper justice. Each court

should plan for the disposal of execution and miscellaneous matters in such a manner that these cases receive adequate and proper attention and are not given step-motherly treatment.

Recording statement of the complainant under section 200, Cr. P. C.

There are certain specific matters in regard to the workings of the criminal courts to which reference has to be made. Under section 200 of the Code of Criminal Procedure, the statement of a complainant has to be recorded soon after the complaint is filed. Our investigations showed that in most of the criminal courts the record of the statement of a complainant under section 200, Criminal Procedure Code was made by an Ahalmad to the dictation of either the clerk of the complainant's counsel or some *pairokar*. This was a most unsatisfactory state of affairs. It was illegal and can not but be strongly condemned. The record of a statement on oath of a complainant had to be made by the Magistrate and if the Magistrate did not do it himself he shirked his duty.

Registering of cases in the courts of Magistrates.

An amount of delay and corruption was caused because cases received in the Court of Magistrates were not expeditiously registered. The Magistrates should see that cases received in their courts are entered in the register, if possible, on the very day they are received or, at any rate, not later than the next day. This will ensure that there was no delay in issuing process. Further it will eliminate some amount of corruption that centres round this matter of registration of cases and the issue of processes.

Issue of Processes in Criminal cases.

We have noticed that sometimes criminal courts' Ahalmads, whose duty it is to issue process, do not do so expeditiously but delay such matters in order to make illegal gains. It should be the duty of presiding officers to check on these matters for if a proper check is kept on issue of processes then quite a number of unnecessary adjournments were likely to be avoided.

Witnesses to be paid their allowance in the presence of the Presiding Officers.

We noticed that witnesses appearing before criminal courts to give evidence were sometimes not paid their travelling allowances and diet money, or at any rate, not in full. Presiding Officers should see that this is done in their presence. We have in another place dealt with this question.

Repayment of money and return of property.

Repayment of money and return of property deposited in courts was a source of a good deal of corruption. We have dealt with this also at another place in greater detail. What we wish to say here is that courts should pay particular attention to these matters since these provide great opportunities for corruption and did in fact cause harrassment and unnecessary trouble to parties.

Granting remands and bail applications.

Granting of remand and releasing accused persons on bail were two matters which caused infinite trouble and harrassment to accused persons and their relations. We have, therefore, dealt with these matters in greater detail at another place. At this place we only wish to say that these matters required careful attention by presiding officers. Remands should be allowed judiciously as provided for by the law and not as a matter of routine; and that in the matter of bails the procedure which we have envisaged elsewhere should be strictly followed.

It is our belief that corruption, delay and harassment can be kept away from courts to a very large extent if presiding officers kept control over their subordinate staff and give their personal attention to various matters as mentioned above.

Hand book for civil court.

Behaviour in court and out of court was very important in respect of persons who did judicial work. The rules of business and administrative instructions which are issued from time to time for guidance of subordinate civil courts are scattered through the General Rules (Civil), circular letters of the High Court and the various Government orders, with the result that very few officers have any clear idea of these. In our opinion it would be very useful if a small handbook containing the rules of business and other relevant administrative instructions which were meant for the guidance of the presiding officers of the subordinate civil courts were prepared and issued by the High Court. Such a handbook, we may point out, exists for Magistrates working on the criminal and revenue sides of the courts subordinate. These handbooks should be modernized and brought up to date in the light of our recommendations. We further suggest that the handbook which should now issue should contain instructions in regard to social contacts which a judicial officer can legitimately make or should properly avoid.

Aloofness for judicial officers.

There can be no doubt that a certain amount of aloofness was absolutely essential for judicial officers. A judicial officer could not mix freely in clubs and social gatherings because such mixing was likely to embarass him in the discharge of his duties as a judicial officer. The restraint and the dignity which was expected of a judicial officer was something, if not superior, certainly different from the restraint and the dignity which was expected of some one else.

In this connection it is interesting to notice the following observation made by the Law Commission in their 14th, Report at page 102:

> "It has to be realised that if the public is to believe that justice is being impartially administered, judges cannot rub shoulders with one and all in a manner which any other person may do. Their public activities and even their pronouncements outside the court have to be consistent with the isolation which their office demands. The lapse in the observance of these essential rules of conduct has undoubtedly, in some measure, affected the prestige of the judges in the public eye."

Judicial officer not to place himself under any obligation.

One matter in our opinion needs special emphasis by us and that is that a judicial officer should never get into a situation where he would find himself under an obligation, however slight, of any member of the Bar or a private citizen. We were told that some officers sometimes used the cars of lawyers and private citizens for their private use. This was

in our opinion, wrong and created an unfavourable impression on the public mind. Judicial Officers, in our opinion, should never make a personal request to any member of the Bar or any prospective or actual litigant.

Their treatment towards Bar.

There should be no discriminatory treatment by a judicial officer in any matter in court. Lawyers, senior or junior, must receive the same courteous and considerate treatment at the hands of the court which they, as Members of an honoured profession, deserved. But this does not mean that a judicial officer should not pull up any members of the profession when they deserved such pulling up. Indeed, it is the duty of courts to make their displeasure known to such lawyers as deserved censure for their conduct.

CHAPTER XXII

SUPERVISION, INSPECTION AND VIGILANCE BY THE PRESIDING OFFICERS AND HEADS OF OFFICES

Importance of inspection by presiding officers

Importance of inspection.

Our investigations have shown that delays, harassment and corruption prevailing among the staff of the subordinate courts can to a considerable extent be controlled and checked if presiding officers exercise effective supervision through periodical inspections, surprise visits and all round vigilance. The existing rules provide that every presiding officer shall inspect his office and the central office, if any, of which he holds the charge, at least once a quarter. Some officers, however, fail to follow these directions due to overwork or disinclination. Some treat these inspections as a non-serious routine matter and do not take any lively interest in them. It would be interesting to note the following observations made by the Law Commission in their 14th Report at pages 224-225 in which they have emphasised the importance of such inspections by presiding officers:

> "A feeling appears to have grown among judicial officers that their duty consists only in the discharge of judicial functions and that administrative matters are of secondary importance or beneath their notice. Such a view is entirely erroneous. The efficient working of a court does not depend only on the work of the judicial officer in taking evidence, hearing arguments and delivering judgment. A number of sections in the administration departments of a court contribute to the satisfactory ending of a cause. The working of each of these sections calls for a certain measure of administrative scrutiny by the presiding officer. Only persistent and close scrutiny of the working of these administrative sections can control corruption. A paper-book can be held up, a summons may be kept back, a decree may not issue in proper time, a copy may not be delivered or a payment order can be delayed. Delays or obstruction in these and similar matters which cause hardship to parties are utilised by the subordinate staff to make improper gains. The court over which a judicial officer presides suffers in the public eye if the administrative set up of the court is corrupt. This undoubtedly reflects discredit on the judicial officer concerned. It is, therefore, of the utmost importance that a judicial officer should examine the administrative sections from time to time and control the staff. It is necessary that the High Courts should impress upon all judicial officers the importance of a periodical examination of the working of their offices."

We respectfully agree with the Law Commission in this matter. We would further suggest that the presiding officers besides making these prescribed periodical inspections which should be thorough and searching and not merely routine inspections, should also pay surprise visits quite often to their offices. They should see whether any unauthorised inspections

Surprise visits to offices.

are allowed by clerks, whether any outsider is employed by a clerk to help him in his work and whether the litigants are in any way harassed by the staff. They should now and again talk to the litigants and find out their difficulties and grievances. During these inspections and surprise visits the presiding officer should see whether all the registers precribed under the rules are kept up to date and in the handwriting of the clerk concerned, whether all the indices of all the files are complete and in the handwriting of the clerk dealing with the file, whether processes have been issued in time and their priority has been strictly observed and such other matters. They should examine some of the reports made by the office to see if they are substantial and helpful or only technical and vague. They should specially look into the execution of orders in miscellaneous cases. If there is any delay in the execution of the orders passed by the presiding officer, the clerk at fault should be pulled up. Frequent surprise visits to the Copying Department when the copies are distributed can be very useful. Every presiding officer should be required to maintain a diary in which he should note down the date and time of his surprise visit, his observations and suggestions, if any. This would prove of value not only to the officer who keeps it but also to his successor.

Power to punish their staff to be delegated to presiding officer.

It also appears desirable that larger delegation of powers, in the matter of punishment of the staff should be made to the presiding officers of different courts instead of leaving all these powers, as at present, in the hands of the District Judge. This would result in better control by the presiding officers over their subordinate staff.

Administrative control and supervision by District Officers

Supervision and control by District Officers.

One of the modes of exercising effective control over the work of subordinate courts is the personal inspection of these courts and their establishments by superior officers. Generally speaking, a District Judge exercises control over all the civil courts in his district. We have recommended in another chapter that there should be an integration of the cadres of Munsifs and Magistrates. A natural corollary of this integration would be that the magisterial courts would also be brought under the administrative control of the District Judge. Till such time as it is brought about, the magisterial courts shall continue to be under the administrative control of the District Magistrate or the Additional District Magistrate (Judicial) in separation districts. Under the present rules a District Judge and a District Magistrate are required to inspect every court subordinate to them at least once a year. But sometimes due to heavy judicial work the District Officers do not find it possible to make these annual inspections. Some District Officers find this work monotonous and uninteresting. So even if they make these periodical inspections prescribed under the rules they do it perfunctorily. We have found that lack of frequent and effective supervision, inspection and control by superior officers has been one of the major causes of delays and accumulation of arrears in courts subordinate.

Usefulness of inspections and surprise visits by District Officers.

We need hardly point out that inspections by District Officers of subordinate courts, provided they are thorough and searching, can serve very useful purpose. Inspections could be of value only if they were intensive and done by a person who had intimate knowledge of what to see and where to see and further how to suggest remedies where evils were noticed. Inspections had to be done with an idea of suggesting remedies for any shortcomings rather than with the object of finding fault with the officer whose work was inspected. During such inspections, the inspecting Judge can always examine the work of a judicial officer to see whether he has adequate control over his subordinates, whether he is strict in granting adjournments or grants them as a matter of course, whether miscellaneous and interim applications are disposed of expeditiously and whether he tries to control the dilatoriness with which the proceedings are conducted and delays caused in the administrative machinery of the court. For this purpose a number of records of cases should be examined and their order-sheets perused by the inspecting Judge himself. The inspection should cover all the aspects of a court's functions. It is also important that the inspection reports should show a correct picture of the state of affairs prevailing in a court. The inspection note should point out the defects in working and contain instructions to the subordinate officers for their guidance. It may be mentioned that the judicial officers on account of their peculiar position cannot freely consult others like executive officers. The only guidance they can get is from their superior officers who can assist them in the solution of their practical difficulties at the time of inspection of their courts. So it is essential that the inspection report should not only be informative but also instructive.

Besides these periodical inspections there should be surprise visits by District Officers to the subordinate courts and their offices. These surprise visits would keep everybody alert. They would make presiding officers and the staff punctual in attending their courts and offices and deter the subordinate staff from indulging in corrupt practices openly or harassing the litigants. During these surprise visits and inspections the District Officers can talk to the litigants to find out their difficulties. They can see if the witnesses are detained unnecessarily and then sent away without being examined. They can find out if the cause-lists are settled intelligently by the presiding officers and if any cases are adjourned whether the parties are informed about it or not.

Appointment of Registrar to assist the District Judges in their work

Registrar in District Judge's Court.

We have emphasised above the importance of effective control and supervision by the District Judges over the subordinate courts and their respective offices. Our investigations have, however, shown that the burden of judicial and administrative work on the District Judges is so heavy that they cannot cope adequately with the type of inspection work and supervision which we have visualised of the subordinate courts. It was suggested that a Registrar should be appointed to the Court of District Judge to assist him in his administrative work as also in doing some of the inspections. The Committee

had invited opinion on this point in its questionnaire (Q. 20). The replies received indicate that opinion is sharply divided on the question of the appointment of a Registrar who could relieve the District Judge of a major part of his administrative duties. Some persons have expressed the opinion that the appointment of a Registrar to the Court of District Judge is not necessary and would entail unnecesary expenditure. They have expressed the view that all administrative work should remain with the District Judge but in order to relieve his workload miscellaneous judicial work, such as cases under the Guardian and Wards Act, Trust Act, Hindu Marriage Act, etc. may be transferred to other judicial officers and if the regular work with the District Judge is also found heavy then additional courts of Additional District Judge or Civil and Sessions Judge may be created. This way the District Judge would, they feel, get more time to devote himself to administrative work including the work of inspections and supervision of subordinate courts. It has also been stated that an officer called "the Sadar Munsarim" being there in each Judgeship to assist the District Judge in his administrative work, no further relief appeared necessary to him.

Divided opinion.

Views against appointment.

Those who are in favour of the appointment of a Registrar are of the opinion that such appointment will help in quicker disposal of cases and eliminating a lot of corruption. They point out that administrative work specially in bigger judgeships where the number of subordinate courts is very large, has become so heavy that the District Judge needs substantial extra assistance and this would be available by the appointment of a Registrar. The work of the Sadar Munsarim who is also the Stamp Reporter for the court of the District Judge, is already heavy and this officer cannot be effectively deployed for other additional tasks. The existing arrangement in bigger judgships regarding day to day supervision of offices and central sections like copying department, record-room and nazarat is far from satisfactory. The District Judge appoints some of the officers in his judgeship as officer-in-charge of one or other of these central sections under him. The officers so appointed are expected to do this extra work of supervision in addition to their full load of judicial work. They are expected to do the same amount of judicial work as other officers who are not given any administrative work. The result is that they are not able to devote enough time to administrative work.

Arguments in favour of appointment.

There is yet another factor which does not permit the presiding officers of courts to do the supervisory work properly. Each presiding officer has to remain sitting in his court (except for a brief lunch interval) from 11 a.m. to 4 p.m. The surprise inspection cannot, therefore, be made during these hours. A presiding officer can make the surprise inspection either just before 11 a.m. or soon after 4 p.m. Such surprise inspections by presiding officers of courts, though always very desirable, can have only a limited effect. People know it for certain that while doing judicial work no presiding officer would get up for making surprise inspections. In order to

cut out a good deal of corruption and harassment that was prevalent in subordinate courts it was necessary that a responsible officer should during working hours be on the move through court premises watching, observing, questioning and supervising. This kind of perambulatory work could not be done by any of the judicial officers as at present functioning in the district courts because of their very heavy workload. The Registrar could do this work very easily.

Committee's recommendations.

After a careful consideration of the evidence that was available to the Committee and the views expressed for and against the appointment of a Registrar in the Court of District Judge, the Committee was of the opinion that it was necessary for effective supervision and in the interest of efficiency that an extra officer of the rank of a senior Civil Judge should be posted in the bigger judgeships like Kanpur, Allahabad, Varanasi, Agra, Lucknow, Meerut, Bareilly and Gorakhpur where the number of subordinate courts was large. He may be called Registrar or Civil Judge (Administration) or may be given any other name which might be deemed proper. The advantages that such an appointment would bring in its wake would be worth the cost incurred. It is interesting to note that it was not said by anyone that more administrative control and vigilance was not required nor was it suggested by anyone that the District Judge had not a very heavy workload or that he could effectively take on the control and vigilance we wanted : what they attempted to make out was that the desired result could be achieved by making other appointments.

The Registrar by assisting the District Judge and relieving him of some of his administrative burdens can contribute largely towards effective supervision and control of the subordinate courts. The Registrar should, in our opinion, be selected with great care if the post was going to prove useful to the extent to which we visualise its usefulness. He should be a judicial officer of about ten years' standing and have administrative aptitude. The position of the Registrar of a District Court *vis-a-vis* the District Judge, that we visualise, will be something akin to the position of a 'Personal Assistant' to some of the important executive functionaries. The Registrar should be able to relieve the District Judge of some of his minor and routine judicial work also. The Committee, however, wishes to make it perfectly plain that they do not suggest that the District Judge should feel completely relieved of the overall responsibility for the judicial administration of the district.

Some of the many functions which the Registrar can perform are indicated below:

Functions of ie Registrar.

1. The Registrar should normally be in charge of the nazarat, the copying department and the record-room over which he should exercise effective supervision and control.

2. Objections on reports of Sadar Munsarim regarding limitation and deficiency of court-fees, etc. on suits and appeals filed in the court of the District Judge can be disposed of by him.

3. Complaints about corruption against ministerial staff can be enquired into by him under the direction of the District Judge.

4. He can make inspection of courts of some of the junior officers under the direction of the District Judge.

5. He can scrutinise delay statements and inspection notes received from subordinate courts.

6. He can look after the routine correspondence with the Government, the High Court and the Accountant General.

7. He can also keep an eye on the offices of the Sub-Registrars where corrupt practices are said to be largely prevalent, the District Judge being at present the District Registrar also.

The apprehension that a Registrar would not have enough work for the day is by no means justified. The Committee has in a previous chapter recommended centralised execution in these bigger judgeships. This work of execution of decrees of Civil Judges can also be entrusted to the Registrar who would be an officer of the rank of Civil Judge. In that capacity he can be made in charge of the Amins. In our opinion this officer would be in a better position to perform this execution work and keep strict control over the executing agency, namely, the Amin, so as to check him from indulging in corrupt practices.

We have also suggested the integration of the cadre of Magistrates with that of Munsifs, which would mean that the Courts of Magistrates would be brought under the administrative supervision and control of the District Judge. The inspection and supervision of these courts would entail a heavy burden on the District Judge and the Registrar can considerably relieve him in this work. As soon as these schemes as recommended by us are implemented there is bound to be enough work for the Registrar.

MONTHLY MEETINGS OF THE SUBORDINATE OFFICERS WITH THEIR DISTRICT OFFICER

Monthly meetings by District Officers.

The importance of personal contacts between the District Judge and the other judicial officers working in the district under his control cannot be over emphasised. With his greater experience of men and matters the District Judge can, and we expect will, help mould the young officer into the best traditions of the service. There are many other advantages which would be referred to in brief later. We, therefore, suggest that District Judges and District Magistrates should every month call a meeting of the presiding officers of the courts subordinate to them and discuss with them their problems and give them suitable guidance. Such a meeting will also assist the District Judges as also the District Magistrates in understanding the problems of the subordinate courts and in devising suitable measures for solving them. These meetings can prove very useful in discovering workloads and in a redistribution of the case work. These meetings will not only give the Judge an opportunity to instruct other presiding officers but will also afford him opportunity to

keep an effective and constant control over the pending litigation in all the courts within his jurisdiction. Such meetings are being held by the District Magistrates in some districts and we are told they are proving useful.

Once in two or three months the President and the Secretary of the Bar Associations may also be invited to these meetings and matters touching the Bench and the Bar can be discussed as also discussion may take place regarding the prevention of corruption and the solution of any difficulties felt by the litigant public in the working of the courts. We, therefore, recommend that such monthly meetings should be held by the District Judges and the District Magistrates. We, however, wish to say that these meetings should not be permitted to degenerate into mere formal and routine affairs.

Periodical returns

Another method by which control over subordinate courts is exercised by the superior courts is through the scrutiny of the periodical returns submitted by the subordinate courts. The rules framed by the High Court and the Government prescribe that periodical returns setting out the number of cases instituted, the numbtr of cases disposed of, the number of cases pending and similar other information should be submitted by the subordinate courts. These statements show the state of the pending file in each court. A careful scrutiny of these returns for a few months can clearly reveal how presiding officers are dealing with their pending case file. From a scrutiny of these returns a District Judge or the High Court can easily detect any increase in institutions or any slowness in disposal or a tendency to accumulation of arrears. The District Judge can, if he is sufficiently vigilant, make timely request to the High Court for additional officers before the situation gets out of control.

Periodical returns and their scrutiny.

Under the existing rules every magistrate is required at the close of each fortnight to furnish a statement in the prescribed form to the District Magistrate or the Additional District Magistrate (Judicial) as the case may be, in respect of all case work done by him during that period. Similarly, every Assistant Collector has to furnish at the close of each month a statement in another prescribed form to the District Magistrate or the Additional District Magistrate (Judicial), as the case may be, in respect of rent and revenue case work during the month. In these statements the magistrate or the Assistant Collector is required to explain any delays in the disposal of cases. If these statements are carefully scrutinised by the District Officers they can be very revealing. They can show whether the presiding officer has kept pace with the institution, whether he is disposing of cases in accordance with a proper Schedule or is merely attempting to dispose of the lighter suits and leaving the heavier and the more complicated cases aside, and whether he does the work normally expected of a presiding officer in that court during the period under review. They would further show whether the staff has kept pace with the work by consigning the records of the decided cases and returning the "badar files" to the record-room.

Fortnightly returns of Magistrates and monthly returns of Assistant Collectors.

These returns to be carefully scrutinised.

Returns prescribed for civil courts.

As regards civil courts, the return that is to be submitted monthly by the subordinate civil courts is in Form no. 146 prescribed by rule 415, General Rules (Civil). In this statement every presiding officer has to indicate the pending cases in his court at the close of the preceding month. Besides the monthly statements, the subordinate civil courts have also to submit quarterly and annual statements prescribed by rules 413, 414 and 418, General Rules (Civil) which contain detailed information regarding several other matters. In our opinion, these statements howsoever complete in certain respects are thoroughly inadequate for the purpose of appraising the capacity of a presiding officer of a court to manage his file, or to know whether there is any real slackness on his part or to find out if there is a tendency in the officer to take up only easier cases first and to adjourn the older and the heavier cases. We would, therefore, suggest that the monthly statement should at least contain the following additional information:

Amendments suggested.

1. Number of cases year-wise pending at the beginning of the month;
2. Number of cases instituted or received by transfer or remand during the month;
3. Number of cases transferred to other courts;
4. Total number of cases to be disposed of other than by transfer;
5. Number of cases disposed of during the month year-wise; and
6. Number of cases pending at the close of the month year-wise.

These details should be given separately in regard to different types of cases, e.g., regular suits, civil appeals, execution cases, miscellaneous cases, etc. These monthly statements should also show the number of records of decided cases remaining unconsigned for more than a month together with the dates of decision of three oldest decided records remaining to be consigned.

Delay explanation in quarterly statements.

In the quarterly statements the subordinate courts should also furnish an explanation for the delay with regard to cases which are pending for more than a year. A proper scrutiny by the District Judge of this type of information can be of great help to him in appraising the efficiency of the presiding officers of different courts and in exercising an effective supervision over them.

Monthly statements of Sessions work and amendments suggested in them.

So far as the work of a Sessions Judge is concerned, the monthly statements which are furnished to High Court in Forms 36 and 38 as prescribed by rule 172, General Rules (Criminal) contain sufficient information to enable the High Court to know the state of the pending file and to judge the efficiency of the presiding officer. We would, however, suggest that a brief explanation of delay should also be given in respect of all criminal cases pending for more than six months as shown in column no. 8 of the statement in Form no. 36.

Circulation of monthly statement of outturn of judicial officers.

We would further suggest, as has been suggested by the Law Commission also, that the District Judge should circulate monthly to the judicial officers in the district a statement showing the individual outturn of work of all officers so that good work done by some officers may be recognised and serve as stimulus to others to emulate them.

Inspection by High Court of District and subordinate courts.

The inspection of subordinate courts and particularly the District Courts by the High Court was equally necessary for the proper administration of justice.

Inspection of all subordinate courts by a single Judge puts too heavy a burden.

The Committee respectfully wishes to point out that the present system of placing the entire burden of inspections of courts subordinate by the High Court in the hands of a single Judge had proved ineffective. The State of Uttar Pradesh was the largest State in India, and the problems which arose in this State varied from area to area, and, therefore, in order to have proper inspections and to maintain proper control over the workings of the courts subordinate which were dispersed over as many as 54 districts, it was necessary to divide the State into several zones and to place each zone in the charge of a senior Judge. Each Judge in charge of a zone could sit in Committee with either the Chief Justice or the Administrative Judge, as thought desirable, and discuss the problems and the results of the inspections made by him in order that a proper decision could be taken where necessary.

Dividing the State in zones for the purpose of inspections, each zone being in charge of a Judge.

Law Commission's views on this matter.

In this connection it would be pertinent to notice what the Law Commission in its 14th Report, Volume I, at page 237, said:

> "We must also point out that it is impossible for any one Judge of the High Court to be placed solely in charge of the work of inspection and supervision. We came across an extreme case in one of the High Courts where one Judge out of about 20 Judges was in sole charge of the inspection of courts in as many as 51 districts in addition to dealing with administrative work. In yet another State inspection work was done only by the Chief Justice. Any such arrangement is bound to be unsatisfactory as the Judge in question will be unable to devote adequate time to these duties unless he is largely or even wholly freed from judicial work."

The Law Commission also pointed out that in certain Southern States all Judges of the High Court were entrusted with inspection duties and each Judge was placed in charge of one or more districts in the State for a period of one or two years. All matters relating to that district, both judicial and administrative, pass through the hands of the Judge in charge of the district. The Law Commission recommended the adoption of this system of which they made reference at page 238 of their 14th Report.

Frequency of inspection of subordinate courts.

The Law Commission recommended that all subordinate courts should invariably be inspected by the District Judge atleast once a year and all district courts and atleast one subordinate court in each district should be inspected by a High Court Judge atleast once in two years. In our opinion.

however, it was necessary for having proper control over courts subordinate that there should be yearly inspections of the district courts by the High Court.

Allowance to be made for time devoted to inspections and requirements of personnel to be planned accordingly.

The plea that inspections took time and upset the outturn of judicial work was a poor excuse. The work of inspection was as important, if not more important, as judicial work, and the only proper way of maintaining a proper outturn of judicial work was to take into account the time taken by inspection in planning for the requirements of the personnel. While assessing the personnel required for manning district courts as also the High Court the amount of time which was to be taken by these intensive and detailed inspections should be taken into account: it may be that so far as the High Court was concerned it may mean an addition of one more Judge to the existing strength. Roughly there were ten large judgeships with a large number of courts and thirty medium and small judgeships, and on a conservative estimate the time required for inspections alone was likely to total 200 days or so. Provision should, therefore, be made while assessing cadre strengths for this work-load also.

CHAPTER XXIII
FACILITIES FOR LITIGANT PUBLIC AND WITNESSES AND THE BAR

Repeated attendance of witnesses, a source of harassment and should be avoided.

There was complaint that witnesses are asked to attend court on a number of occasions and were sent away without being examined. This caused considerable harassment to the witnesses and dislocated their business. It also put unnecessary work in criminal cases upon the police who had to serve the summons on the witnesses over and over again. In civil cases the parties were put to unnecessary financial burden of having to pay diet money and travelling expenses of the witnesses on several occasions. It has been suggested that once a witness has attended court in obedience to a summons, his evidence must be recorded and he must be discharged. Effort should be made not to summon witnesses over and over again. Further effort should be made to see that no witness has to wait for more than three days on any account. In our opinion, such a provision should be incorporated by our High Court also in the General Rules (Civil) and the General Rules (Criminal). The Government should make a similar provision in the Revenue Court Manual for the guidance of the revenue courts.

Discourtesy to witnesses should be avoided.

Another factor which deters the witnesses from attending the court is that a witness is often treated with scant courtesy not only by the cross-examining lawyer but sometimes also by the presiding officer. The Law Commission in their 14th Report at page 326 observed as follows:

> "Not infrequently a witness is treated with scant respect not only by the cross-examining lawyer but even by the presiding officer. There is a natural tendency on the part of witnesses to avoid the ordeal of a lengthy and sometimes unpleasant and undignified cross-examination which is so frequent a characteristic of the subordinate courts. Unnecessary rebukes, unfavourable comments upon his demeanour and ridicule in open court if the witness is sometimes driven to give an unintelligible answer, are not uncommon. In our view this is one of the principal reasons why witnesses shun the courts of law and avoid having to give evidence. We suggest that the High Courts should draw the attention of all presiding officers to the necessity of maintaining proper decorum in court and ensuring proper treatment of parties and their witnesses whatever their social status. They should be treated with courtesy and dignity and not permitted to be brow-beaten or insulted in court."

We fully agree with the above observations of the Law Commission. In our opinion, it is the duty of the Judge to give necessary protection to the witness if any cross-examining counsel tries to brow-beat or insult him in court.

PROVISION OF WITNESSES' SHED, DRINKING WATER AND LAVATORIES

In most of the places no provision is to be found in court compounds for the convenience of the witnesses. In several places the witnesses have to wait under trees in the compound

of courts or in the verandahs. No protection is provided to them from the sun or the rain. No conveniences of any kind exist. In some courts there is what is known as "witnesses' shed" roofed but exposed on all sides. In many places this shed is made use of for other purposes.

Proper witnesses' shed to be provided.

In our opinion, there should be a proper witnesses' shed in every court compound. The sheds should be such as may give protection to the witnesses who use it from the sun and rain. In places where the various courts are scattered over a large area, more than one such shed may be provided so that the witnesses may wait within a convenient distance from the court where they have to give evidence and they may easily attend the court when called. It is also necessary that there should be provision for clean drinking water and sanitary lavatories for the use of witnesses and parties in every court compound. In this connection the Law Commission observed in their 14th Report at page 778:

Clean drinking water and sanitary lavatories.

> "It is regrettable that while Governments have been repeatedly expressing their concern over delays in the disposal of criminal cases, they should forget the difficulties created by their own action in this respect. It is imperative that proper conveniences should be provided for the witnesses in court houses and that they should not be herded together and treated, as they are in some places, as cattle."

Diet money allowed to the witnesses

Opinion has generally been expressed before the Committee that the existing rates of travelling allowance and diet money paid to the witnesses who attend criminal and civil courts are inadequate. For the purpose of payment of travelling allowance and diet money to the complainants and witnesses who attend criminal courts, they have been classified into three classes: under the first class persons of superior rank are included; under the second class persons such as zamindars, traders and pleaders are included and the rest of the witnesses belonging to the class of cultivators, labourers and menials are included in the third class. The diet money allowed to a witness of first class is Rs.4 per day, to a witness of second class Rs.1.25 n.P. per day and to a witness of third class Re.1 per day. In our opinion, these rates of diet money are inadequate particularly because no out of pocket expenses which a witness has to incur, besides the actual fare paid by him for his travelling by rail or bus, were paid to him.

Existing rates of diet money inadequate.

Sometimes a clerk or a constable of the court deducts a certain percentage from the travelling allowance and diet money paid to the witnesses. In our opinion, Government should take steps to prescribe adequate scales of allowances for the witnesses and make suitable budget provision for such payments. It is also necessary to provide a proper machinery for supervision so that the witnesses may be assured of the receipt in full of the allowances meant for them. Rule 169 of the General Rules (Criminal) lays down that the travelling expenses and the diet money shall be paid to the witnesses in the presence of the presiding officer or the office Superintendent or the Munsarim in the case of District Magistrate and

Adequate scales of diet money should be prescribed.

Sessions Court respectively. It has been brought to the notice of the Committee that sometimes the Presiding Officers due to pressure of work leave this job in the hands of the ministerial staff which often leads to corruption. It appears necessary that the presiding officer or the office Superintendent or the Munsarim should get the payment to the witnesses made in his presence in order to avoid any corruption on this score. He should, therefore, append a certificate in the register of witnesses (form no. 18) in his own hand that the payment was made before him. For this purpose the necessary amendment should be made in rule 169 of the General Rules (Criminal).

Safeguards against any illegal deductions from diet money.

We would further suggest that a provision should be made in the rules that in every Magistrate's Court the reader should have a permanent imprest of Rs.50 for payment of diet money and travelling expenses to the witnesses. As soon as the examination of a witness is finished he should submit his bill and the payment should be made immediately by the reader in the presence of the Magistrate out of this imprest money. It would eliminate unnecessary detention of a witness after his examination has finished for the purpose of getting his diet money and travelling expenses. At the close of the day, the reader should prepare a consolidated bill of diet money and travelling expenses paid by him to all the witnesses on that day and collect this amount from the Nazir to make up his imprest.

Diet money to local witnesses.

It was also pointed out to the Committee that there was no specific provision in the existing rules for payment of any diet money to local witnesses—the witnesses who turned up to give evidence from the same town where the court was situated. As a matter of practice some Magistrates and Sessions Judges paid diet money to such witnesses while others did not. The Committee was of the opinion that even these local witnesses should get diet money and in order to make it clear a specific provision should be made in the rules.

Witnesses to be recompensed for their out-of-pocket expenses.

At present one of the reasons why the witnesses do not want to attend court to give evidence was that they were not recompensed for their out-of-pocket expenses. In the opinion of the Committee the travelling expenses paid to the witnesses should be such as would cover all their out-of-pocket expenses.

Travelling allowance may be sent to a witness by money order on his request.

It was also suggested that if a witness left without taking his travelling allowance and made a request that it should be sent to him by money order, his request should be complied with by sending the amount to him after deducting money order commission. There is no specific rule about it and some courts comply with such requests made by the witnesses while others do not. We recommend that a specific provision should be made in the rules to extend this facility to witnesses.

It was brought to the notice of the Committee that some times witnesses who attend identification proceedings conducted during investigation are not paid their travelling allowance. As the identification proceedings form part of investigation the expenses of witnesses who attend these proceedings have to be borne by the police. Sometimes it happens

that an identification proceeding has to be adjourned more than once either because of the Magistrate being otherwise busy or due to some default on the part of the police. The result is that the witnesses are called up repeatedly to attend these proceedings. The police in order to avoid any criticism on the score of unjustified adjournment of identification proceedings which necessitated repeated attendance by witnesses, pay the witnesses travelling allowance of only one visit. In the opinion of the Committee this practice is unjustified and it works hardship on the witnesses. These witnesses should be paid their travelling allowance each time they are required to attend identification proceedings. These matters should be clarified in rules and administrative instructions should be issued to the police to comply strictly with such rules.

Travelling allowance to be paid to the witnesses each time they are required to attend identification proceedings.

Bar Association buildings

The Bench and the Bar are parts of the same whole namely the administration of justice. A properly equipped and efficient Bar is necessary for a proper judicial administration. We have already indicated the desirability of providing suitable court houses. We now propose to deal with the matter of buildings to accommodate Bar Associations.

Bar Association Buildings.

We found that at several places many of the members sit under unseemly thatched-sheds, trees or in the open. During rains they, their clerks and their clients throng the verandahs of court-rooms which thereby get overcrowded and noisy. In our opinion it is necessary that every Bar Association should have a suitable building for the use of its members. The building should be sufficiently commodious to have a well equipped library, a reading-room, a sitting hall and enough accommodation for the chambers of lawyers.

CHAPTER XXIV

THE PROBLEM OF THE CORRUPT OFFICIAL

In the preceding chapters we dealt with the general problem of corruption, delay and harassments. Therein we indicated that for the common man the entire problem of corruption centred round the corrupt official: that is why we have chosen to head this chapter "The Problem of the Corrupt Official".

The problem of the corrupt official a serious one.

The problem of the corrupt official was not only a problem for the common man who had the misfortune of suffering at the hands of such an official but also for the State—for the State the problem was much more serious than for the individual.

Corruption exists mainly in the ranks of ministerial staff of subordinate courts.

Our investigations showed that charges of corruption were generally and largely against the ministerial staff of the subordiate courts. There was fortunately not much complaint against judicial officers presiding over courts, though unfortunately there was some complaint about the presiding officers as well. The fact that the number of corrupt judicial officers was very small could offer but little consolation, for what was disturbing was that there had been and continued to be inroads into the moral sanctum of these officers.

A corrupt judicial officer to be dealt with differently from a corrupt ministerial officer.

The problem of the corrupt official manning the courts and its offices has to be viewed and dealt with in two fairly clear cut divisions: the one that must concern itself with the corruption of a presiding officer of a court and the second with the corruption of a ministerial officer. For certain purposes the problem which was posed by the two categories of officials mentioned above could be dealt with on a common footing but for certain other purposes a separate treatment appeared to us to be called for for these two classes of public servants. It appeard to us that a rational and realistic approach to the problem lay in dealing with the two classes of public servants in slightly different ways. A judicial officer who was found to be corrupt had to be dealt with ruthlessly for his lapses could not be viewed lightly nor could mere correctives be used in his case as we could, without detriment to the public service, in the case of some of the erring ministerial staff. In the case of the petty ministerial official drawing a paltry salary with little prospects of better living succumbing to temptation could be understood and could, if the lapse was not serious, be viewed with some generosity, that, however, could not be a proper attitude to take in the case of a judicial officer with all his education, with all his training and with his better emoluments and prospects.

A corrupt Judicial officer to be dealt with ruthlessly.

Expectation for better living as one of the causes of corruption.

We are conscious that unsatisfactory economic conditions and a certain amount of uncertainty in regard to the future as also a general upsetting of the values has had adverse effect on all public servants. We are also conscious of the fact that there has been of late a tremendous rise in the expectations for better living in young officers. But even so we have not been able to find adequate justification for educated young men, in whose hands the future of the services lay, for departing from the path of rectitude.

We should like here to draw attention to the fact that it so happens, and we think it is a very sad state of affairs, that in certain departments of Government it has been possible for officials to add to their emoluments by methods which could not be approved of, and yet these have been tolerated in a sense, both by Government and society. The better living conditions of some officials which could not apparently be sustained on their salaries has also had a pernicious effect on young officers. A young officer seeing another young officer possessing a frigidaire, a motor car, a well-furnished flat, very understandably developed a desire to possess these amenities and if this desire could not be subdued or countered, then it led to pit-falls which produced the corrupt official. In our opinion it was essential that there should be an all-round tightening of standards and all-round awareness that it was not proper, in the national interest, to live beyond one's means even though such living was not sustained by illegal gains. A rich man's son in Government service, at a particular rung of the ladder, should not live beyond his salary even if his father could supplement his income, because his prosperous way of life had an adverse effect on his brother officers.

Corruption in other departments also casts its pernicious effect on young officers of subordinate courts.

All-round tightening of standards necessary.

We earlier referred to traditions, and we emphasise that building up of good traditions was like building a dam to protect a man from the floods. There is, we know, a Judicial Officers' Association as also an Association of the Ministerial officers. One of the things which these Associations should be encouraged to do was to devote a part of their energy and their organisational capacity in building up and maintaining good traditions. These Associations should be made to realise that they are not like trade unions or labour organisations existing mainly for collective bargaining but they are Associations to sustain and uphold the good traditions of the service and that it was part of their duty not only to find out erring members but also to keep them on the straight path of integrity.

Value of traditions of service.

Senior officers, we regret to say, have not, by and large, discharged their obligations to their junior colleagues. In our opinion it was an obligation of a senior officer to see that his junior not only progressed satisfactorily so far as his work was concerned but that he kept to the right path and adhered to the traditions of the service. This kind of fraternal care by senior officers for their juniors would not only foster feelings of loyalty but would help maintain the good traditions of a service.

Duty of senior officers towards their junior colleagues.

Attempt had been made earlier to discover a procedure under which disciplinary proceedings against Government servants could promptly and effectively be undertaken for Government very rightly emphasised the importance and the necessity of maintaining a clean and efficient public service. For any Government clean and efficient public services were a *"sine qua non"* of progressive administration.

Procedure for disciplinary proceedings against corrupt official.

In 1952 the State Government appointed the Disciplinary Proceedings Enquiry Committee under the chairmanship of Pandit Govind Ballabh Pant—we have referred to this Committee earlier. The terms of reference of this Committee were:

Disciplinary proceedings Enquiry Committee.

(1) To devise a definite, clear and prompt procedure in the conduct of disciplinary proceedings against Government servants employed in connection with the affairs of the State, designed to ensure that the guilty did not escape due punishment in order that the State Government may have clean, efficient and honest servants; and

(2) For the above purpose, to recommend, together with necessary drafts, such amendments as may be called for in the disciplinary and other rules in force bearing on disciplinary matters in proceedings against such Government servants.

Recommendations of that committee.

The Committee made very valuable recommendations. The Committee suggested certain amendments to the Civil Services (Classification, Control and Appeal) Rules. They also suggested certain methods for combating corruption and tackling with the corrupt official. The recommendations of the Committee, unfortunately, failed to make the desired impression on corruption. In our opinion effective impression on corruption could only be made if we could quickly and certainly discover the corrupt official and swiftly and certainly deal with him. At the present moment there was no separate or adequate agency for finding out a corrupt official: resort, therefore, had to be taken to the agency which was supplied by the police besides the inadequate agency of a departmental enquiry. The agency of Deputy Superintendent of Police (Complaints) has not functioned satisfactorily because the officers selected for the work were not generally very suitable men, as also because this agency did not inspire the confidence of all the departments where there may have been corruption. In our view this agency has not been, as it could not be, of use for investigating corruption in courts. An enquiry into cases of corruption by the police has, by and large, failed to inspire public confidence. The present manner of conducting departmental enquiries has also not inspired public confidence. As found by the Disciplinary Proceedings Enquiry Committee, there was an amount of reluctance on the part of some officials to start disciplinary proceedings against or to pass a severe sentence on their subordinates. The Committee said this:

Present procedure of police investigation or departmental enquiry into cases of corruption not satisfactory.

> "An important Head of a Department has stated that starting a case against a Government servant who has influential connexions is like raising hornets' nest."

They also said this:

> "Pressure of all sorts is brought to bear on officer conducting the proceedings so that the accused Government servant may get a lenient treatment. The legal and procedural difficulty, the fear of being faced with counter allegations, and the possible reversal of orders on appeal, have been mentioned as other factors which incline officers to let things alone."

The Disciplinary Committee observed that to guard against such softness or disinclination on the part of departmental heads, an attitude which adversely affected the morale of public

services, it should be firmly impressed on all concerned that the punishment awarded in disciplinary cases should always be adequate, and that particularly in cases involving corruption it should be such as may have a deterrent effect. We regret to say that the injunctions, and if we may say so with respect, very proper injunctions, were not generally heeded.

Sifarish still continues.

"Sifarish" and pressures still worked, we regret to say, on a large scale and with the things as they are we felt that not much headway could be made in either tracking down a corrupt official or in swiftly bringing him to book and punishing him. In the opinion of the Committee it was essential to discover first a procedure by which enquiry into complaints against a corrupt official could be made by an agency which to all intents and purposes could not be influenced, and thereafter to discover a forum to deal with the alleged corrupt official in accordance with a procedure which was not time-consuming and was in accordance with laws which were adequate to deal with the situation with which the State was faced.

Administrative Tribunal Rules.

In 1947 Government made certain rules called the Disciplinary Proceedings (Administrative Tribunal) Rules, 1947. These rules came into force in November 1947 and applied to all Government servants under the rule-making control of the State Government. Under these rules a Tribunal was created for dealing with the corrupt official. This Tribunal was to consist of two persons one of whom was to be an officer of adequate seniority, as the head of a department or a Commissioner of a Division, and the other was to be a judicial officer qualified for appointment as a Judge of a High Court. Under these rules the Governor had the option, so to speak, of referring cases to the aforementioned Tribunal relating to either individual Government servants or class of Government servants or Government servants of a particular area in respect of matters involving (*a*) corruption, (*b*) failure to discharge duties properly, (*c*) irremediable general inefficiencies in a public servant of more than ten years' standing, and (*d*) personal immorality. Under the rules the Governor had also the power to refer the case of a gazetted officer to this Tribunal in case the gazetted officer made a request that his case be referred to the Tribunal. The proceedings of the Tribunal were to be in camera and neither the prosecution nor the defence was allowed to be represented by counsel. The Tribunal could make such enquiry as it liked provided it was guided by rules of "equity and natural justice". Before formulating its recommendations the Tribunal was required to give a concise summary of the charges to the official and to give him an opportunity orally or in writing within a prescribed time to offer his explanation. If the delinquent official made an oral explanation then the Tribunal was under an obligation to record the explanation in the officer's own words. The Tribunal had also to co-opt an assessor to assess the guilt and this assessor had to be a departmental officer higher in rank in the department to the charged official.

Procedure of Administrative Tribunal time-consuming and unsatisfactory.

The position of the Tribunal was only that of a fact-finding and recommendatory body because the recommendations of the Tribunal were not binding on the Governor. What was time-consuming and unsatisfactory, in our opinion, was that after

the findings and the recommendations of the Tribunal had been received by the Governor the Governor could not make final orders in regard to dismissal, removal or reduction in rank without again having the necessity of giving the delinquent official an opportunity to show cause against the action proposed to be taken against him—this was in view of what was provided for under Article 311(2) of the Constitution. The Disciplinary Proceedings Administrative Tribunal, in our opinion, suffered from a large number of failings which necessitated a reappraisement—reappraisement of the utility and desirability of continuing the Tribunal.

Three things essential for dealing with the corrupt official.

In our opinion three things were essential for dealing with the corrupt official effectively: first, to collect the entire law dealing with corruption, namely, the law contained in sections 161 to 165-A of the Indian Penal Code and that contained in the Prevention of Corruption Act, and to incorporate that law into a single enactment. It was further necessary to provide in this statute a comprehensive and enlarged definition of "corruption". This statute should provide for a simple proceedure for the trial of a corrupt official before a Tribunal the composition and powers of which we shall presently indicate. Under this statute rules of evidence have got to be slightly liberalised inasmuch as evidence of repute should be made admissible though with certain safeguards. Secondly, to create an agency which could investigate into the complaints sent to it for investigation in accordance with the procedure visualised by us later. Thirdly, there should be a Tribunal consisting of three persons, a sitting or a retired Judge of the High Court, a senior District Judge and a very senior District Magistrate. If there was too much pressure of work on a single Tribunal, then the State Government should have the power in the statute visualised by us to appoint more than one Tribunal to deal with cases arising in specified areas or to deal with cases sent to it for decision.

(1) Consolidated enactment dealing with corruption of public servants.

(2) Investigating agency.

(3) Tribunal.

Common Tribunal for trial of corruption cases against gazetted and non-gazetted officers.

A delinquent official, whether he belonged to the category of a gazetted officer or not, was to be dealt with by this Tribunal, for we saw no justification at all for accepting the suggestion which was made to us that the cases of non-gazetted officers should be tried by a Special Judge and cases of gazetted officers alone should be tried by the Tribunal. A corrupt official whether he was high-up in the hierarchy or low down was an equal menace to the public service and if a case of corruption merited trial then it merited being tried by the same agency in respect of either category of public servant.

No right of appeal against the decision of Tribunal, but a restricted right of review to High Court.

The Tribunal which we have visualised was to be what was often termed as "high-powered Tribunal": the Tribunal, in our view, would be a very safe body in whose hands the destinies of any official, high or low, could with confidence be placed. It was suggested that there should be a right of appeal to the High Court against the decision of the Tribunal. We have considered this suggestion with great care and have given it our most anxious consideration, and we have come to the conclusion that to provide a right of appeal to the High Court against the decision of the Tribunal would be not only stultifying the Tribunal but would also, in a sense, defeat the very

object with which we set out to suggest a new law, a new procedure, and a new forum for the purpose of meeting the danger which faces the public services at the present juncture. In our opinion the ends of justice would be subserved to its fullest if we were to suggest that a right of review, a right that would be something in the nature of a second appeal or a revision under the Small Cause Courts Act, was to be given to the High Court: this restricted right would also have the merit of not burdening the High Court with unnecessary appeals from the decisions of the Tribunal.

In the following pages of this Chapter we shall indicate the procedure which was to be followed in cases involving the corruption of officials.

Complaints against corrupt officials could be received either by the Head of the Office, Anti-Corruption Committee or any other officer or organisation that may be appointed or created, but these must be forwarded to the Head of the Office—the District Judge or the District Magistrate, as the case may be. The Head of the Office should also have the power to act *suo moto* on information received by him which he believes to be reliable.

Preliminary enquiry by Head of office.

Except in the cases where the discovery is made *suo moto* by the District Judge or the District Magistrate, it would be necessary for him to check upon the complaint received by him or the information laid before him by means of a preliminary enquiry. In most cases the District Judge or the District Magistrate would be well-advised to call the complainant and record his statement in an effort to find out whether the complaint had substance or not. If he found that the complaint or the information received by him was baseless, no further action would be necessary except in certain cases to take action against the complainant for making a palpably false report. If the complaint or the information is found to have some truth in it, the District Judge or the District Magistrate, as the case may be, should decide whether the case should be referred for further investigation to a police officer or a departmental enquiry should be made. If the complaint contains serious charges of corruption then in such a case the proper thing would be to get an investigation made by the police. But if the complaint relates to some minor lapse or impropriety then a departmental enquiry would serve the purpose.

Head of office to refer the case to police for investigation or proceed departmentally according to the nature of allegations.

If the "Head of the Office" decided to have a departmental enquiry then he could either do it himself or get it done through a subordinate officer of a rank higher than the one enquired into.

Department al enquiry to be held under existing rules.

The enquiry should be done according to the rules that are already in existence and the punishment imposed accordingly.

Investigation by police under the direction of Head of Office.

If the Head of the Office decided to have an investigation made by the police, he could take the help of the Superintendent of Police and could request him to depute an officer, not below the rank of an Inspector of Police, to investigate into the complaint. The Police Officer who is deputed to make such an enquiry must keep the Head of Office informed of the

progress of the enquiry by submitting to him fortnightly progress reports so that it may be possible for the Head of Office to keep a proper check over the investigation. Rules should, if necessary, be made whereby power should be given to the Head of the Department to control and direct the investigation by the police in respect of a complaint sent for investigation to the police.

The result of the enquiry, including all the evidence collected in support of the charge, should be placed before the Head of the Office for scrutiny and for decision as to—

(1) whether the case was a fit one for prosecution, or
(2) whether it was a fit case for departmental action, or
(3) whether no further action was necessary.

In order to determine the above course of alternative action the Head of the Office had to bear in mind certain principles for his discretion in the matter had to be regulated and not be unchartered so as to give him a power for discrimination. If the evidence in support of the charge appeared *prima facie* sufficient to warrant a conviction, the Head of the Office should send the case for trial before the Tribunal which we have visualised above.

If the Head of Office finds that the evidence in support of the charge was not sufficient *prima facie* to sustain a conviction then he should not send the case to the Tribunal for trial. The Head of Office should deal with the official departmentally if, in his opinion, such course was necessary.

We should like to mention here that as a matter of procedure the Head of the Office should give information of the result of the proceedings taken against a subordinate official, in case the proceedings were started on the complaint of either the District Anti-Corruption Committee or the Bar Association as the case may be, to that body.

COMPLAINTS OF CORRUPTION AGAINST PRESIDING OFFICERS OF SUBORDINATE COURTS

Complaints of corruption against presiding officers could be made to or received by either the Head of the Office, namely the District Judge or the District Magistrate, unless the complaint relates to the District Officer himself, or the Head of the Department, e.g., the High Court or the State Government. The checking upon such complaints by means of preliminary enquiry should be made by the District Judge or the District Magistrate, as the case may be, unless the complaint was against the District Judge or the District Magistrate himself, in which case the preliminary enquiry would have to be made by some other superior officer under the directions of the High Court or the State Government, in the case of those officers who were not under the administrative control of the High Court.

If the District Judge or the District Magistrate after examining the complainant or making such further preliminary enquiry as he thought fit, found the complaint to be baseless, he need not take any further action, except sending a detailed report to the High Court or the Government as the case required.

If, however, the preliminary enquiry showed that there was *prima facie* substance in the complaint, the District Judge or the District Magistrate, as the case may be, should forward the complaint along with the material collected by the preliminary enquiry together with his recommendation to the High Court or the State Government, as the case may be. If the High Court or the State Government considered that the case was such as required further investigation it could refer the case to the investigating agency which, we suggest, should be established.

Result of preliminary enquiry to be sent to the Head of Department.

In our opinion there should be a separate agency for investigating complaints of corruption against presiding officers of subordinate courts. This investigating agency should be under the direct control and supervision of a selected officer of the rank of a Commissioner of a Division or a District Judge who should have under him a certain number of selected police officers of a rank not lower than a Deputy Superintendent of Police and officers who may be picked out from the Criminal Investigation Department. The investigating agency should send fortnightly reports about the progress of investigations undertaken by it to the High Court or the State Government. We may emphasise that this investigating agency should not have the authority or power to start investigation against officers without the permission of the High Court or the State Government.

Separate investigating agency suggested.

After completing the investigation the head of the investigating agency should forward his report along with the material collected to the High Court or the State Government which had referred the case to it for investigation.

Investigating agency to send report and material to the Head of Department.

The High Court or the State Government after a careful scrutiny of the report of the investigating agency and the material collected by it, should decide *prima facie* whether or not there was enough evidence to substantiate a charge of corruption. If it found that there was such evidence, it would sanction the prosecution and the case would go before the Tribunal for trial. If the High Court or the State Government was of the opinion that the evidence collected in support of the charge was insufficient to sustain a conviction but even so, if there was material which showed that the officer was *prima facie* guilty of unbecoming or improper conduct, then it could decide to start departmental proceedings. These departmental proceedings were to be conducted according to the Disciplinary Proceedings Rules already in existence.

Head of Department to decide whether the case should go for trial before the Tribunal or Departmental action to be taken.

In the end we should like to say that in our view the Administrative Tribunal which now functions under the Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, should be abolished and that the procedure which we have visualised in this Chapter should be given effect to.

CHAPTER XXV

THE PROBLEM CREATED BY A CORRUPT LAWYER, A CORRUPT CLERK AND SOME OTHER INDIVIDUALS LIKE PETITION WRITERS, ETC.

An efficient and clean Bar necessary for proper administration of justice.

It is almost axiomatic that an efficient and a clean Bar was absolutely necessary for efficient and proper administration of justice. The legal profession had enjoyed a tremendous reputation in this country, for its services not only to the cause of justice but also in other spheres of national activity. But those great services of the Bar in the national life have now become past history and one does not now feel that impact which the Bar made in the past nor does one now feel that the Bar was effectively pulling its due weight in the administration of justice. There was a feeling that the profession had lost not only its high prestige and glamour but had also lost some of its utility: there may be reasons for this but nevertheless the fact remains. It is not our intention to pronounce any kind of judgment on the Bar or to evaluate its contributions in presentie. Even so we could not refrain from noticing some of the reasons why the Bar had fallen from the high pedestal which was its in the past. One apparent and possibly the main reason was that the profession had become overcrowded, and the overcrowding was by that vast majority of young lawyers who could not afford to await their turn and undergo a period of careful preparation and training for the day when they would claim a just share of the prizes which the Bar had to offer. Under economic stress some lawyers were unable to keep up the moral and ethical standards, the standards of professional morality, honour and integrity. In the struggle for existence some stooped to such practices as made them pawns in a game of unrighteous competition to steal a march over an adversary in a court of Law.

The evidence, which we had, indicated that there were some lawyers in practically every district of the State who instead of being a bulwark against any corruption in courts assisted the growth of such corruption. According to the opinion of th Committee the problem of corruption posed by these member. was a problem which should have been primarily tackled by the Bar itself.

We should, however, like to point out that it was the Bar in a sense that directly asked Government by a resolution adopted by it at its conference in November 1957 to tackle the problem of corruption but even so there was not much evidence before the Committee on which it could say that the Bar had itself attempted to fight corruption in the courts subordinate. Whatever may have been the position in regard to the Bars' attitude before the appointment of this Committee thereafter the Chairman and the Committee had unstinted cooperation from the Bar. The Committee has no doubt, as was pointed out by the Chairman at each occasion that he had to

address members of the Bar that if Bar Associations in every district made a concerted, and we emphasise the word 'concerted', effort to stop corruption then corruption could and would make its disappearance from courts subordinate.

Concerted effort of the Bar can eliminate corruption from courts subordinate.

The Committee was conscious of the fact that some of the corruption that grew, grew on account of the inequities of procedures. Those inequities the Committee had pointed out at an earlier place in this report and they also suggested there how those inequities could be remedied. The Committee feels that it would be now for the Bar to see that after the procedural inequities and the unjust rules of procedure have been corrected the Bar definitely turned its face against any corruption which could be said to have been born out of those procedural matters.

The Committee thought that the Bar collectively and even in small groups possessed the necessary genius for tackling the problem of the corrupt lawyer and that it was primarily in the interests of the legal profession itself that this problem could be tackled by the Bar itself.

Problem of the Corrupt lawyer should be tackled by the Bar itself.

The problems which arose out of overcrowding, etc. of the Bar were again problems which could and should primarily be tackled by the Bar itself, though a Bar was entitled to ask for external aid particularly the aid of the State in implementing some of its decisions which required such aid to reduce the magnitude of the problem which was presented by the overcrowding of the profession.

The Committee was conscious of the fact that the Bar was an independent, autonomous organisation and so it was not the intention of the Committee in any manner to trespass either on that independence or on that autonomy when the Committee made any suggestion for tackling the problem that was posed by the corrupt lawyer or his clerk.

The Committee sincerely hopes that the Bar Councils with their added strength and with a unified Bar as is contemplated would tackle the problems which were peculiar to the Bar and which cast their shadows on the social order and the administration of justice. We are confident that these problems would be taken up by the Bar in earnest and will be tackled realistically by the Bar at the earliest opportunity. As we said there was no dearth of organisational talent at the Bar nor was there any dearth of organisational facilities, what apparently was lacking was a desire to get down in earnest to tackling the problems. Any sense of complacency at this juncture in respect of some of the problems visualised by us above appeared to us to be suicidal to the Bar.

It was thought by some members of the legal profession and some public men that if the Bar could appoint powerful committees of its own in each district to keep a watch on the doings of its members in relation to their behaviour and activities in court and to bring to book such members of the legal profession who committed lapses of either professional etiquette or were guilty of professional misconduct, then there would be

Vigilance Committees of the Bar.

very soon a cleansing of the ranks and this cleansing of the ranks would not only redound to the credit of the Bar but would greatly enhance the prestige of the Bar and the administration of justice in the country.

Lawyer's clerk.

The institution of the lawyer's clerk was a problem in itself for the clerk posed a problem, often, not only to the courts, the general public but also to his master and his client. Evidence that was before the Committee showed that much of the prevailing corruption in subordinate courts could in a sense be traced to the lawyer's corrupt clerk. A great amount of the "greasing of the palm" that went on in the courts below was done at the instance and through the agency of the lawyer's clerk. The activity of the lawyer's clerk in this field appears to have been of such long standing and so wide spread that generally charge was made from the clients for such expenses under a head of "miscellaneous expenses". In many cases it was found that lawyer's clerks, particularly those who were not paid well by their masters, either acted as touts or made money out of the client by a kind of fleecing under the garb of "miscellaneous expenses".

Drastic action for breach of the provisions of Rule 603 of the General Rules (Civil).

Rule 603 of the General Rules (Civil) provided that no clerk of an advocate, pleader or vakil was to be allowed to work in the court unless his name had been registered with the District Judge. But in spite of this rule there were many clerks functioning in district courts who were not registered with the District Judge. In the opinion of the Committee, drastic action should be taken against such clerks and action should also be taken against those lawyers who employ such clerks for doing their work.

District Judge to cancel the registration of a lawyer's clerk found guilty of offering tips and bribes to the Court officials.

Rule 608 of the General Rules (Civil) gave power to a District Judge to cancel the registration of a clerk. Offering tips or bribes to court officials by lawyer's clerk was not one of the things specifically mentioned in the rules which entitled the District Judge to cancel the registration of the clerk. This kind of conduct could fall under general clause *(f)*, but we think it would be better if there was a specific clause added to this rule which gave power to the District Judge to remove the name of any clerk from the register who was found or suspected of offering tips or bribes to court officials.

Preventing a lawyer's clerk from coming into contact with the court officials would be a retrograde step.

It was suggested by some that rule 607 of the General Rules should be amended so as not to permit lawyers' clerks to come in contact with the officials of the courts except in the presence of the presiding officers. After giving careful consideration to this suggestion we are of the opinion that this would be taking a retrograde step. A certain qualification was prescribed and, if necessary, the qualification should be made stiffer, to entitle a person to be enrolled as a lawyer's clerk and after a lawyer's clerk was registered with the District Judge then he should have certain privileges and one of the commonest privilege that he could have was the privilege of presenting applications, etc., making inspections for or on behalf of his master. In case we were to withdraw the privilege of a lawyer's clerk coming in contact with the office for routine ministerial work then we would be leaving practically no temptation for a man to have

himself registered and further we would be causing unnecessary strain on busy lawyers by excluding their clerks from doing ministerial work for them. This in our opinion was unjustified.

Lawyer to control his erring clerk.

The responsibility for controlling a corrupt lawyer's clerk should, in our opinion, be fairly and squarely placed on the lawyer himself. It is our earnest hope that Lawyers' Associations will concern themselves with this pressing problem and would devise ways and means for not only controlling their erring members but also the erring clerks of their members.

Petition writers and typists.

Corruption of petition writers and typists sitting in court compounds had at certain places attained quite a vicious form. There was no power apparently to bring a petition-writer to book for indulging in corrupt practices except possibly cancelling his licence and same was the case with the professional typists that sat in court compounds sometimes with permission and sometimes without permission. Some of the petition-writers and typists in some of the districts were a positive menace to the litigant public and it was a pity that no one has so far troubled to find the extent of their mischief and the extent of the harassment that they cause to the litigants particularly the ignorant ones. Petition-writers and typists act as touts not only for lawyers but also some of the corrupt subordinate officials of courts. The lawyers could not, in our opinion, be justly made responsible for tackling the problem that was posed by the corrupt petition writers and typists but the problem, in our opinion, had to be tackled and should be tackled by the District Judge and the District Magistrate at the district level in each district. From what the Committee saw of their activities in the various towns, that were visited, it was observed that there was no attempt either to check or keep watch on the activities of these persons with the result that the unscrupulous in their fold almost ran wild. It is the opinion of the Committee that the District Judges and the District Magistrates should in each district have a clear picture of the number of petition-writers and typists that function within the court compound under licence and that the District Judge and the District Magistrate, as the case may be, should have control over their activities by keeping a watch on those activities. Occasional rounds of the court compound without notice are likely to do a lot to keep these people and others dealing through them under check. It would be, in our opinion, for each District Judge and District Magistrate to discover his method of tackling the problem that presented itself in his jurisdiction by these petition-writers and typists. What the Committee wishes to make out is that this problem is an urgent one and must be tackled firmly by District Judges and the District Magistrates within their respective jurisdictions.

District Officers to keep watch on the activities of unscrupulous petition writers and typists.

Touting.

In the context of things that we have mentioned above one other matter, in our opinion, needed just a passing reference and that was touting. That touting had an adverse effect on the administration of justice admitted of no serious doubt. Further, that touting was prevalent on a fairly large scale in

certain places also admits of no doubt. The question was how was this problem to be tackled and who was to tackle the problem. We should like to focus attention on the second part of the question posed first, for if the answer to the second part of the question posed were one way then it would not appear necessary to tackle the first part of the question.

Toutism is really and essentially a problem of the Bar.

The problem of touting was really and essentially a problem of the Bar. It was the Bar that lost face, because it tolerated touts, it was the Bar that lost custom in a sense and in many an other sense the bar lost by the prevalence of touting so that it was the Bar really which was hurt most by touting rather than the litigant or the administration of justice. Though, as we pointed out, it did disfigure the name of administration of justice in a sense that the Bar was as much part of the administration of justice as the Judges yet, on the other hand, the administration of justice was not really a sufferer by touting. Legislation to tackle the problem of touting was on the anvil and we understand it is going to get through the legislature The Committee does not feel called upon to express any opinion as to whether that legislation was likely to make an impression on the prevalent touting or not. What the Committee does wish to say emphatically is that the problem of touting was the problem of the Bar and it could only be effectively controlled if the Bar as a body discovered ways and means to eradicate touting.

CHAPTER XXVI

ANTI-CORRUPTION COMMITTEES

District Anti-Corruption Committees.

One of the questions which we incorporated in our questionnaire related to Anti-Corruption Committees which the State Government had set up in the various districts of the State in order to discover whether or not these Anti-Corruption Committees had proved useful either in fighting corruption or in tracking down and bringing to book corrupt officials.

Existing composition.

The composition and the scope of the action of these Committees underwent changes from time to time. Originally, the District Magistrate presided over the deliberations of these Committees and the District Judge and the Superintendent of Police were also members of such Committees. The present composition of the District Anti-Corruption Committees was as follows:

(1) Chairman (non-official);

(2) Members of the State Legislature resident in the district;

(3) A representative of the Bar Associations in the district; and

(4) Five members (non-official) to be nominated by Government out of a panel drawn up by the Committee, which was the last outgoing Committee.

The Chairman was elected unanimously and a senior Magistrate, nominated by the District Magistrate, was to act as Secretary of the Committee. The District Magistrate and the Superintendent of Police, though they were not members of the Committee, had the right to address the Committee whenever they thought it necessary. These officers were directed to attend the meetings generally and were enjoined to attend the meetings of the Committee in case they were specially invited.

Functions.

The Government Order said this in regard to the functions of the Committee:

(1) Each Committee, and individual members wherever possible will undertake propaganda against corruption and will do their best to mobilise public opinion against this evil, stressing the fact that giving of a bribe is as much an anti-social act as its acceptance.

(2) It will be the duty of the members to bring to the notice of their respective Committees complaints of corruption against particular Government servants or departments. Members of the Committee shall not, however, have any authority to undertake enquiries into complaints brought before the Committee.

(3) The Committee may also suggest, in an advisory capacity, steps for preventing corruption and steps to be taken in individual cases of corruption.

(4) A complaint brought before the Committee, which contains specific charges and in support of which some evidence is produced or which appears to be well-founded shall invariably be taken due notice of and enquired into

by the appropriate departmental authorities, if the Committee desires that this should be done. The result of the enquiry shall be placed before the Committee. If a complaint against an official is made by a member of the Committee, co-operation of the latter shall be invited at the time of the departmental enquiry and, if possible, also in the subsequent prosecution, if any.

Quarterly progress Statements.

The Secretary of the Committee was required to place before the Committee, at the end of each quarter, a statement showing the action taken in each of the cases brought to the notice of the Committee, and also to apprise the Committee of the anti-corruption activities undertaken in the various departmental offices in the district during the quarter.

Local Heads of Department to furnish quarterly statement of cases of corruption against government servants.

The local Heads of Departments are required to furnish quarterly statements to the Committee showing the progress of all cases of corruption against Government servants, in their respective districts, in which proceedings are instituted either departmentally or in courts. Information about the result of all cases of corruption which are prosecuted in courts in the district is also required to be furnished to the respective Anti-Corruption Committees.

Causes of failure of the District Anti-Corruption Committees.

The opinion reffected in the replies received by our Committee as also the replies given by witnesses when they were orally examined in regard to the District Anti-Corruption Committees indicated that without doubt these Committees did not prove a success; indeed, if anything, they proved an utter failure. The main reasons suggested by witnesses and the replies to the questionnaire received by the Committee could be classified as follows:

(1) Lack of interest and zeal on the part of the members as exhibited by their absence from the meetings of the Committee.

(2) The Committees have no power to investigate into the complaints or to give their opinion or verdict on them.

(3) They have no wide publicity, no fixed office, no wholetime officer and staff. There is also no direct liaison between them and the Criminal Investigation Department, nor can they lay a trap on their own initiative to catch a corrupt official.

(4) Lack of co-operation from Heads of Offices.

(5) Lack of co-operation from the members of the Bar and the public. No concrete cases are brought to their notice.

(6) Absence of District Magistrate, District Judge and the Superintendent of Police from the membership of these Committees.

(7) Improper selection of the members of the Committee.

Some changes in the personnel and the powers and functions of the Committees necessary to make them really useful.

In order to make these District Anti-Corruption Committees really useful some changes, in our opinion, appeared necessary both in the personnel as also in the powers and functions of these Committees. Under the existing set up these Committees are nothing more than a sort of information collecting bodies

and that information too is not in such detail as could form the basis of either departmental or judicial action. They do not possess any specific power, of what may be called, investigation into any complaints that may be brought to them or may come to their knowledge.

Undue stress appears to have been laid on these Committees doing propaganda against corruption. Propaganda has no doubt its value in tackling the problem of corruption but the type of propaganda which these Committees were capable of doing was not that type of propaganda which could yield satisfactory results. No propaganda against corruption could be useful unless there was factual logic in it, unless those doing the propaganda against corruption could satisfy their audience that corruption did not pay, either him that corrupts or him that was corrupted. For this kind of propaganda a good deal of data and its clever exploitation was essential. These Committees, by and large, have neither of these two prerequisites for good propaganda.

The Committees, in our opinion, should undertake two responsibilities; first, of tracking down corruption in the sense of finding out corrupt people; and secondly, to make an endeavour of convincing as large a number of people as is practicable, of the desirability, in their own interest and in the larger national interest to shun corrupt practices and bestow social disfavour on corrupt people. It should be one of the objects of propaganda done by these Committees to make people conscious of their rights and to enlighten them about the facilities and convenience available to the people under the existing laws and rules, free from any obligation. The public should be educated to have patience and to get their work done according to turn.

Committees may be empowered to make preliminary enquiries into cases of corruption.

It is essential that these Committees should enjoy a certain amount of prestige, for without that their word could carry very little conviction to those to whom they may talk. In our opinion time has come when these Committees should be entrusted with a certain amount of power to make preliminary enquiries, for unless they possess this power, they cannot easily or even effectively stop corruption in their districts. Much, as we may say that fear is a bad thing, yet the element of fear does, very often, produce the desired improvement—whether it is the fear of God or the fear of punishment on being found out committing an offence.

Public confidence.

Public confidence in the results of any enquiries made into cases of corruption was essential. Public confidence could be rehabilitated only if the public was satisfied that the enquiry into complaints would, in the first instance, be made by some one who was not in any manner connected with the officer complained against and was one who inspired public confidence.

Some senior officers and lawyers should also be on these Committees.

In order that the Anti-Corruption Committees could do a preliminary and thorough enquiry into the complaints about corruption, it was essential that the personnel of the Committees should be such as possessed the requisite mental, moral and professional skill for this task. Public men, if chosen with care, could act as assessors and could play a useful role on such Committees, but it is essential to have on those Committees some

senior officers and some senior lawyers who have had the necessary training in separating the chaff from the grain.

Composition recommended.

A District Anti-Corruption Committee should, in our opinion, be fairly representative in character, but at the same time it should not be too unwieldy. The District Magistrate and the Superintendent of Police should be the members of this Committee, and as far as practicable, they should regularly attend its meetings. Some other principal heads of important district offices should also be *ex officio* members of this Committee. Among the non-official members some public workers known for their honesty, integrity and missionary zeal should be included. It is not necessary that all the members of the Legislature residing in the district should be members of these Committees. Only those of them, who have a real inclination and enthusiasm for this work, should be selected for appointment by Government.

A reorientation in regard to powers and composition of the commitee desirable.

In conclusion, we would like to point out that in view of our recommendations and suggestions contained in Chapter XXIV, Anti-Corruption Committees, so far as finding out a corrupt official in the offices of the courts (civil, revenue and criminal) and making a preliminary inquiry into allegations against him was concerned, would not be of much value or assistance. These Committees would, however, if there was a reorientation in regard to their powers and composition, be of value in finding out corrupt officials in other departments of Government.

CHAPTER XXVII
CONCLUDING CHAPTER

In this—the last chapter we should like, before we refer again to our main conclusions, to refer to certain matters which were not referred to by us in the preceding chapters, primarily because they did not fall strictly within the terms of our reference.

Corruption to be tackled as a whole.

We have at several places, earlier, emphasised that corruption could not successfully be tackled in the isolation of a single department; at any rate, the problem had to be tackled as a whole in inter-related or inter-connected departments.

Corruption in Registration Department.

The Registration Department was a department which was intimately connected with business in courts. The offices of the Sub-Registrars were mostly in the same compound where the criminal or civil courts of a district existed and functioned: the District Judge was under the law the Registrar and had certain supervisory powers over the Sub-Registrar.

Evidence was led before the Committee to show that there was a good deal of corruption prevalent in the offices of the Sub-Registrars. The corruption prevailing in the offices of the Sub-Registrars re-acted adversely—very adversely indeed—on the offices of the courts. Evidence also indicated that there was a good deal of delays and harassments caused to persons who had to approach the Sub-Registrar's office in an endeavour to have their deeds, etc. registered. A District Judge expressed the opinion that a Sub-Registrar's office was proverbially the most corrupt office under the administration of the District Judge.

We pointed out earlier that the District Judge under the law was the District Registrar and as such he had certain supervisory duties in respect of the Sub-Registrar's office, but even so the District Judge as the District Registrar had precious little control, in the sense in which control could be effective, over the Sub-Registrar. Appointments, punishments, transfers etc., were not within the competence of the District Judge, so that except expressing disapproval on paper a District Judge could but take little action against either an erring Sub-Registrar or his ministerial staff. The Sub-Registrar and his staff were under the direct control of the Inspector General of Registration, an officer who was outside the judicial cadre and who was beyond and independent of any control of the High Court. This state of affairs was unsatisfactory. An improvement in the situation could be brought about only if the District Judge had effective control over the Sub-Registrar. How this was to be effected was for Government to work out; all that we wish to emphasise is that this is necessary and it is hightime that action was taken on this score.

Sale of court-fee stamps through Treasuries.

Court-fees of smaller denominations are generally sold through stamp vendors who sit in the court compound and from whom purchases are made by the general public, but court-fees of higher denominations can only be had from Government treasuries. The process of obtaining court-fees of higher denominations from Government treasuries is unnecessarily complicated and time-consuming. This causes delays and harassment for which there was no adequate justification. There was corruption at this point also for it was difficult to obtain court-fees of high denominations without paying a certain percentage to the treasury clerk who was the point of contact between the public and the Treasury Officer. This levy was thoroughly unjustified and disfigured the administration. Treasury Officers, in our opinion, would do well to keep a very close check on the activities of their clerks, particularly the one who receives requests and takes the money at the primary stage for the supply of court-fees of high denominations.

Inefficiency and delays in police investigations.

In Chapter VIII we probed into the question of inefficiency and delays in police investigations and we suggested therein certain remedies.

Although we found a good deal of evidence of prevailing corruption in this branch of the police department yet we refrained from probing deeper into it and expressing our opinion in regard to it because we thought that this matter could more appropriately be tackled by the Police Commission. We wish here to record that a corrupt system of investigation by the police was as detrimental to the administration of justice as anything else: possibly as a single factor it weighed heaviest in the scale. We express the hope that the Police Commission will find ways and means of ending the corruption and the inefficiency prevailing in the investigating agencies of the police.

New Legislation.

We had noticed earlier that in recent times there was a good deal of new legislation—legislation that more and more touched the daily life of the citizen; this cast a burden on the courts. We had also noticed, particularly in relation to revenue legislation, that that legislation had, in a sense a haphazard growth for it lacked synthesis and co-ordination which made not only for want of symmetry but made adequate implementation difficult. It was, in our opinion, necessary that the State Government and the Legislature should have, apart from the law department as now constituted, assistance—expert assistance—in the matter of not only sponsoring legislation but in all matters relating to legislation. We were asked to consider the desirability of suggesting some permanent machinery which could scrutinise the laws and rules so as to find out defects and shortcomings in them from time to time. This was, in our opinion, necessary.

State Law Commission.

A State Law Commission which, we understand, is in the offing, was in the opinion of the Committee a most desirable and useful body to establish in order to give our laws that content and proper shape which good laws deserve. A State Law Commission could keep a careful watch over social trends and such other matters which alone, if properly noticed,

could provide real meaning to legislation touching the social sphere. We wish, however, to point out that the success of a Law Commission would in its earlier stages at any rate be dependent entirely on the capacity of the personnel, particularly the Chairman and the Secretary.

Problem of corruption.

Coming now to noticing some of the main recommendations which we have made to tackle the general problem of corruption, we wish to emphasise that the problem of corruption is a socio-economic and a moral problem. The extent of the prevailing corruption could not, as we said, be accurately found.

A distinguished member of the Indian Civil Service expressed the opinion, while answering the Questionnaire that corruption must be viewed in its proper perspective. He also expressed the opinion that corruption was by no means the worst evil that could be fall a country. He said, "Tyranny, oppression and cruelty were much worse". We have had no difficulty in agreeing with his view that tyranny, oppression and cruelty were worse than corruption, but we had some difficulty in agreeing with the view which he expressed in the following sentences:

> "Someone has humorously remarked that bribery is the only thing that makes life tolerable in an otherwise oppressive regime. A brief glance at past experience shows how correct this is. The most cruel rulers have been those who in money matters were strictly honest. Had Hitler and his gang been bribable six million victims of the gas chambers would have been alive today. The contrast is provided in Mussolini's regime, where the venal character of the Italians ensured its mildness. As long as the corrupt Mirabeau was alive the French Revolution proceeded along more or less on liberal and humanitarian lines. A reign of terror was unleashed when the incorruptible Robespierre came into power. Aurangzeb and Stalin are, however, examples of rulers who valued honesty above human life and dignity."

We gave careful thought to the above opinion but we were unable to share the view that corruption was like a safety valve and that if the safety valve was plugged too hard the likely consequence was going to be tyranny. The examples from history cited above were not sufficient data for the generalisation made.

Expedition and haste.

In regard to delays we think it necessary to reiterate that the expedition was one thing and haste was another. We wanted expedition and not haste. Haste had to be condemned in the same way as dilatoriness. Delays were, we emphasise, neither inevitable nor inherent in the nature of our judicial institutions. We must be careful not to take recourse to expediencies in our endeavour to master delay which could destroy or shake the vitals on which the administration of justice in this country was founded. We have taken care not to suggest any "over-simplification" of the rules of procedure for sometimes such an act is detrimental to the general good. We

have suggested modernisation of not only the rules of procedure but of working conditions and we consider that unless resort is had to modern methods and unless modern surroundings are created work which would subserve modern needs cannot easily be produced.

Quality and sufficiency of the personnel.

The quality of the personnel must need very careful attention, for it is trite knowledge that unless one gets the right man for the job the job cannot be well done. There should also be sufficiency of strength, for it is also trite knowledge that without sufficient strength satisfactory work cannot be produced.

Vigil and inspections.

We have had occasion earlier to refer to the need for inspections. In our opinion, we cannot over-emphasise this aspect of the judicial administration. A constant vigil on courts and their working was very necessary.

Creation of a permanent machinery to keep watch on the functioning of courts.

One of the terms of our reference was to examine whether it was advisable to create a permanent machinery at district or State level to keep watch on the functioning of the courts and to prevent defects from entering into the system in future. We are definitely of the opinion that it could not be possible to create any new machinery at either district or State level to keep watch over the functioning of the courts, for this would be in the nature of a trespass on the powers of the High Court and other courts and it was not even necessary. We have suggested that there should be proper and regular inspections by the High Court of the courts subordinate and by the presiding officers of those courts of their respective offices. Much of the trouble noticeable was due to the fact that for sometimes due to pressure of judicial business, inspections were neglected. The Law Commission has laid emphasis on proper and regular inspections and we do the same.

Dealing with corrupt officials.

As we said, the problem of corruption would automatically disappear if there were no corrupt officials. We have suggested a procedure for finding out and punishing a corrupt official. In our opinion, impression on corruption could effectively be made if our recommendations on this point were given effect to expeditiously.

Raising of standards and moral fibre of the people.

Reverting now to some of the salient recommendations which we have made in the chapters preceding this one, for we do not wish to provide a kind of summary of our recommendations in this chapter, we wish to begin by saying that the problem of corruption was in one important aspect of it a social problem, and the only manner in which the problem in that aspect of it could appropriately be tackled was to tighten the standards all round—to make all the endeavour possible to raise the moral fibre of the people.

It was essential to create an awareness that corruption disfigured the body polity: this could be done, in our view, by adequate education and adequate propaganda. The process was a long process, but even so a concerted and genuine effort had to be made to achieve the desired end.

Improving the economic and working conditions of the staff.

Improving the economic and working conditions of the staff of the courts subordinate was essential, for as we pointed out earlier these improvements could substantially strengthen the moral fibre of the petty official and thereby make him less vulnerable to temptations.

Adequacy of personnel.

Augmentation of the personnel also was necessary, as we have pointed out in Chapter XVII for inadequate personnel brings about undue pressure of work and delay creates a kind of competition amongst those who want their work done, to have it done out of turn. Much of the corruption, which we have noticed in the offices of the courts below owed its origin directly to this inadequacy of the personnel to manage the workload. It is our opinion that a reassessment of requirements in regard to personnel etc., should be made every five years on a careful scientific basis so that the pressure and the strength on the services never could grow beyond manageable limits.

Selection of personnel.

We have pointed out earlier that however perfect the rules of procedure and the rules for the conduct of business and however perfect the laws, the results could not be perfect unless the human agency that had to work according to those rules and apply those laws had the necessary genius to do things well. This necessitated great care in the selection of men. We have indicated the lines on which selection should be made.

Training of the personnel.

Adequate training, before a new entrant was called upon to perform the functions of his office was, in our opinion, absolutely essential—a *sine qua non* of good administration. The training, in our opinion, should be imparted to all ranks manning the different positions in courts subordinate.

Efficiency and honesty of the personnel.

Efficiency and honesty should be put on a premium while inefficiency and doubtful honesty should be openly and adequately discountenanced. This should be made clear not only by words but by action. An official should be made to feel that efficiency and honesty alone can pay.

Integrity certificates.

Greater care should be taken in the matter of giving integrity certificates. Such certificates, we found, were commonly given in a negative form. In our opinion, this should be discouraged. An officer who was called upon to give such certificates should be impressed with the idea that it is his business to know his subordinate sufficiently well to be able to give an integrity certificate in a positive form. It must be realised that a dishonest officer may get a negative integrity certificate absolutely truthfully from his superior when the superior did not take the trouble to know about the reputation or doings of his subordinate. This, in our opinion, was proving disastrous to the services and every effort should be made by the State to discourage this state of apathy and want of care in superior officers in the matter of giving integrity certificates.

Service traditions should not only be strengthened; Service Associations should enliven their interest in their members. They should play their proper role in keeping members from straying from the strict path.

Officers should not live beyond their own legitimate earning capacity. Ostentatious living by some officers had an undesirable effect on others and should be depricated. We have in one of the chapters suggested certain "Do's and Do'nts" which could assist keeping officers out of trouble.

In our opinion, it was essential to discover a corrupt official with expedition. Any attempt to cover up the sins of an employee of Government by another employee, either higher or lower in rank, should be viewed with serious disapproval.

Co-operation of the Bar and the public.

Every one concerned should be made to realise that corruption should end and that their earnest co-operation was sought and must be forthcoming in the national interest.

July 22, 1961.

B. MUKERJI.

(Subject to note) S. C. KANWAR.

SHIVA NATH KATJU.

SHIVA RAM SINGH.

GIAN PRAKASH.

S. D. KHARE.

M. CHANDRA.

D. C. KUKRETI.

T. KAUL.

KUNWAR SRIPAL SINGH, M.L.A.

L. P. NIGAM.

K. L. MISRA,
20-8-'61.

GOVIND SAHAI.
21-8-'61.

PARIPURNANAND VARMA.
29-8-'61.

SRI S. C. KANWAR'S *Note of Dissent*

I wish to append this note subject to which I have signed the Report of the Committee for Investigation of Causes of Corruption in Subordinate Courts in U. P., particularly regarding some inclusions or omissions made in some of the observations contained in Chapter XXV entitled 'Problem of a Corrupt Lawyer, etc.'.

I am firmly of the opinion that the legal profession, today also, enjoys a tremendous reputation and a high prestige in the country. Regarding national life, there has been a shift only in the direction of its activities. This shift is justified on patriotic grounds. With the ending of the days of slavery and the advent of national rule, through the nation's own elected representatives, emphasisi today in the Bar's contribution to national life is no more on resistance to a foreign rule, but it is on the sanctity of the rights and obligations of the citizens of this great land. I am proud of the unique contribution that the Bar made to national awakening and struggle for freedom, but I do not consider that it is merely past history. Firstly, the past services of the Bar will serve as a beacon light to generations of citizens. Secondly, in the context of things today the members of the Bar are rendering great services by joining the Government, the opposition and other constructive activities of national life. This is also true of several ex-practising lawyers of whom the Bar is no less proud. The Bar, in the courts, is assisting in vindication of the rights and fulfilment of obligations of the citizen and the State, besides conducting other case work. I can say from my observation of the working of the courts subordinate, in respect of which this committee was appointed, that on the whole the lawyer of today is not inferior to or less talented than his counter-part of two decades back. This, I believe, is also true of the High Court Bar.

The Bar today is the only non-official-*cum*-non political institution which has a systematic organization in every district, if not in every sub-division or tahsil, and that it makes a power ful contribution in creating a psychology of respect for law and order and unification of the country.

The Bar does not lament that other sections of society also participate in national life, now. In fact, this general awakening was the result of Bar's great contribution to the national struggle for freedom and was desired by it.

Regarding the observation of the Committee that one does not now feel that the Bar was effectively pulling its due weight in the administration of justice, I am of the view, which view stands supported by numerous resolutions passed at several sessions of the U. P. Lawyer's Conference and its Working Committee, that in order to enable the Bar to pull its due weight in the administration of justice it is necessary that judicial and quasi-judicial posts and posts involving legislative drafting

should normally be filled from the Bar. It is in national interest to create a self-contained judicial system in India. The Bar is specially qualified for all round legal assistance. By its temperament, education and experience, it is eminently fitted to be the main recruiting ground for all judicial, quasi-judicial and legislative posts. I am convinced that such recruitment from the Bar resulting in the creation of a self-contained judicial system, besides being justified on merits shall ensure maximum promptness and efficiency in the administration of justice and shall guarantee a regular supply of legal talent for the perfromance of national and international tasks requiring legal knowledge and experience.

It is an erroneous feeling, if it exists somewhere, that the Bar has lost some of its utility. The existence of the Bar is necessary to work the parliamentary institution and to vindicate the rule of law essential for the proper functioning of the great Constitution of this country.

The Bar has not fallen from any high or other pedestal.

There is much less corruption in courts and offices in the nature of courts, where lawyers appear, than in many civil departments where lawyers do not appear. It is seldom that a forgery is committed while the papers are in court, where the inspections are frequently made also by members of the Bar, whereas complaints of forgery are far more frequent outside the courts. There is no comparison. The conclusion is irresistible that the presence of the Bar very clearly improves matters.

The desire of the Bar to see corruption in courts disappear was evident from the steps taken by the U. P. Lawyers' Conference, all these years, including drawing pointed attention publicly to this problem and asking the Government for the appointment of a composite Committee when the Conference found that the matter could not be solved in isolation, resulting in the formation of this Committee by the State Government.

I do not share the view that in case the Bar Associations made a supreme effort to stop corruption, the corruption could and would make its disappearance from subordinate courts. I know that the genius and the strength of the Bar is great, and organised efforts by it would result in improvement particularly when the provisions of the new Advocates Act providing for an autonomus and unified Bar come into operation. But it is a mistake to think that the efforts of the Bar alone could or would make corruption disappear from the courts. The Bar is not the disciplinary authority in respect of the bribe-taker. I do not think that in a democratic set up and under the rule of law, which must be respected, such disciplinary powers can be conferred on a non-official body with respect to a public servant.

It is my view that the main cause of corruption is to be found in the spirit of individual selfishness arising out of a long period of slavery. Concentrated efforts by all are bound to eradicate corruption. Such efforts coupled with the existence of the independence of the country are bound to restore complete national self-respect and completely eradicate corruption from every sphare of life.

July 22/26, 1961.

S. C. KANWAR,

Advocate, Dehra Dun.

(Ex-President, U. P. Lawyers' Conference),

Member of the Committee for Investigation of Causes of Corruption in Subordinate Courts in Uttar Pradesh.

Explanatory note of Chairman

Sri S. C. Kanwar signed the Report subject to a note which he proposed to send in respect of Chapter XXV.

The note was received on August 1, 1961, and has been incorporated in the Report just above this note of mine.

As Chairman of the Committee I thought it was expected of me to state the background in which Sri Kanwar's note has come into being.

Chapter XXV, as incorporated in the Report, was drafted by me on the data before us and the views which were expressed by the members. The chapter as drafted by me was circulated to all members and on May 30, 1961 there was a discussion on it, and then it was discovered that Sri Kanwar had certain objection in regard to certain view points expressed therein, so it was suggested that since this chapter primarily dealt with lawyers it should be drafted by the learned Advocate General who was a valued member of the Committee and who, as the accredited leader of the Bar, was in the best position to pronounce upon the responsibility of the Bar in the matter into which we purported to probe in this chapter.

The learned Advocate General very kindly agreed to darft this chapter and he handed over a draft to me at Naini Tal. That draft was circulated to all members and this draft came up for acceptance before the Committee on July 22, 1961. Sri Kanwar appeared to have more objections to the draft prepared by the learned Advocate General, apparently because the Advocate General took a more realistic view of the prevailing conditions than had been taken in the earlier draft. There was a discussion in the Committee over the two drafts and it was resolved that the original draft by me should be incorporated, with some amendments which I then made, in the Report. If I understood the sense of the majority at that time, it was not taht the draft of the Advocate General was in any sense exaggerated or did not incorporate the sense of the majority, but the change was made more to mollify Sri Kanwar than for any other consideration : the Committee was able to take this attitude because my draft contained all the basic things worth noticing.

B. MUKERJI.

APPENDICES

APPENDIX A

QUESTIONNAIRE

PART I—*General*

(1) (a) What are in your opinion, the causes of (i) delay (ii) corruption and (iii) harassment in subordinate civil, criminal and revenue courts ?

(i) Causes, extent, forms, occassions, agencies of corruption, delay and harassment.

(b) What is the extent and form of this corruption and harassment in the various courts in your district, viz. :

(i) Criminal courts of Stipendiary Magistrates,
(ii) Revenue Courts,
(iii) Civil Courts,
(iv) Courts which are presided over by honorary officers, and
(v) Panchayat Adalats.

2. (a) What rules of procedure in your opinion, provide opportunities for corruption ?

(b) Which of the following is the main agency through which favours are sought and illegal gratification paid :

(i) Litigants,
(ii) Pairokars,
(iii) Inferior staff,
(iv) Ministerial staff,
(v) Lawyers' clerks,
(vi) Petition writers, or
(vii) Any other person.

(c) Could you indicate which one of the above exercises the largest corrupting influence ?

(d) Can you suggest any procedure for checking their activities ?

3. Do you think that there are any lawyers in your district who encourage or indulge in corrupt practices ? If you think there are any, can you suggest any ways of stopping their activities ?

(NOTE—It is not necessary for you to name anybody).

4. To what extent is the evil of toutism prevalent in your district and how far are touts responsible for corruption ?

5. (a) How far is corruption prevalent amongst process-servers in your district ?

(b) Can you suggest ways to eradicate this ?

6. (a) Is there any corruption in the Sub-Registrar's office in your district? If there is, does it in any way add to the corruption in subordinate courts ?

(b) Has the conferment of magisterial powers on Sub-Registrars in any way added to corruption in their offices ? What are your suggestions in this behalf ?

7. What are the main causes of high cost of litigation ?

8. Do you think that the present procedure for dealing with complaints against corruption leads to harassment, inconvenience and expense to the complainant ?

(ii) Procedure of dealing with complaints.

9. Do you think that complaints about corruption are dealt with promptly and effectively? If not, please suggest a proper machinery to deal with such complaints.

10. Do you think the maintenance of complaint books in courts would assist in checking corruption?

11. Do you think that anti-corruption committees set up in the various districts by the Government have proved useful in controlling corruption? If not, please give reasons for their failure.

(iii) Staff, conditions of work, etc.

12. How far do you think corruption and delays are due to inadequacy of ministerial staff and shortage of Presiding Officers?

13. Will it minimise corruption and lead to expedition if—

(a) over and above the regularly paid staff of the copying department some copyists are engaged on piece-work basis,

(b) the existing system of engaging paid copyists is superseded and instead all copyists are engaged on piece-work basis,

(c) the paid staff of the copying department are given extra remuneration for extra work done after working hours or on holidays?

14. How far in your opinion is the lack of integrity in the staff of various courts due to inadequate remuneration and bad working conditions? What are your suggestions in the matter?

15. What reforms, if any, do you suggest in the system of recruitment or conditions of service of the staff with a view to improving their efficiency and honesty?

16. How far will the provision of a stenographer in every civil, revenue and criminal court assist quicker disposal of cases, eliminate delays and help the eradication of corruption? Please make concrete suggestions in this behalf.

17. How far has the establishment of enquiry offices in the collectorates under the Re-organization Scheme provided useful and convenient to the litigant public? Should such offices be established in Civil Courts also?

(iv) Supervision, inspection and vigilance.

18. How far can corruption be eliminated by a closer supervision by the District Officers? What suggestions do you make regarding the nature of this supervision?

19. Do you think that more frequent inspections by Presiding Officers and other superior officers would help curbing corruption and improve efficiency? Have you any concrete suggestion to offer?

20. Will the appointment of a Registrar who will relieve the District Judge of a major part of his administrative duties help in quicker disposal of cases and eliminating corruption?

21. Do you think it will be useful if the District Judges and District Magistrates every month call a meeting of selected

officers and the Presidents and Secretaries of the Bar Associations for prevention of corruption ?

PART II—Rules of Procedure in Courts

(i) General.

22. Do you think that the present rules of procedure in the subordinate courts contribute to corruption, high cost of litigation, harassment and unnecessary delay and procrastination ? If so, to what extent and in what manner, and how should these rules be amended ?

23. How far have the recent amendments of the law and the rules helped in reducing delays, harassment of the litigants and minimising corruption ?

24. How far are the rules in regard to—

(a) filing of plaints, or complaints ;

(b) applications ;

(c) summoning of witnesses ;

(d) issue of summonses or warrants "dastis" ;

(e) obtaining executions—

(i) grant of orders of courts quickly,

(ii) issue of parwanas,

(iii) reports of Amins and actual executions ;

(f) attachment before judgment ;

(g) fixing of dates in cases ;

(h) transfer of cases from District Judge's file to other judges ;

(i) service of processes ;

(j) grant of copies ;

(k) disposal of interim applications ;

(l) inspection of records ;

(m) bails—

(i) entertainment of applications for grant of bails,

(ii) obtaining police reports on applications for grant of bails,

(iii) passing of orders granting bail by courts early,

(iv) furnishing of bail bonds,

(v) verification of the status of sureties before courts and at tahsils,

(vi) issue of release orders from courts,

(vii) actual release at the jail,

(n) issue of warrants of arrest ;

(o) actual service of summons and warrants of arrest by—

(i) process-servers, and

(ii) constables ;

(p) obtaining refund vouchers;

(q) payment of diet money to witnesses;

(r) searching and summoning of files—

responsible for delay, corruption and harassment, and how should the rules be revised so as to eliminate these evils?

(ii) Stages in procedure.

25. Should the applications, etc. be allowed to be filed in courts throughout the working hours and inspection of records be allowed throughout this period? Have you any suggestions to offer in regard to this matter?

26. Do you think that applications for copies, for refund of deposits, for enquiry about dates and for knowing the position of a case should be entertained even if received by post and replies sent to them through the same channel?

27. Do you think it will help if there is a box placed in every court for the filing of miscellaneous and bail applications which should be opened at fixed hours by the Presiding Officers?

28. Do you think that corruption and harassment can be eliminated if—

(a) Presiding Officers themselves settle the day's cause list,

(b) a cause list showing the order in which cases are to be disposed of is placed on the table a day before,

(c) if orders on miscellaneous matters are passed in open court at some fixed hour each day? Please indicate practice prevailing in your district in this behalf.

29. (a) Do the courts in your district frequently adjourn cases? If so, is it usually—

(i) for want of time because more cases than can be disposed of are fixed,

(ii) on adequate grounds or on account of collusion between the staff and litigants,

(iii) because the lawyers of one or both parties are busy in other courts, or

(iv) for reasons other than these?

(b) Have you any concrete suggestions to offer in this connection?

30. (a) How far do inefficiencies in the service of summonses and notices cause delays and adjournments?

(b) Do you think that a close scrutiny by Munsarims and Presiding Officers of service reports by process-servers soon after they are made help check the evil?

(c) Can you suggest any way of maintaining a better check on the work of process-servers?

(d) Do you think that a more efficient machinery for service could appreciably reduce delays?

(e) Can you suggest a more efficient machinery for service than the one now employed?

(f) Do you think that service of summonses and notices by registered post A/D would be a better substitute for service through process-servers ?

(g) Do you think that any useful purpose would be served by eliciting the aid of Panchayats in the matter of service ?

(h) Can you suggest a procedure by which this can be achieved ?

31. Do you think it should be made compulsory for process-servers or police constables to get the attestation of Pradhans of the Gaon Sabhas in cases where service of summonses or warrants could not be effected ? Do you think this procedure may corrupt the Pradhans ?

32. Do you consider that the setting up of a centralised execution court for a particular local area would result in speedy and effective execution of decrees ?

33. Are execution proceedings in your district unduly delayed by stay orders granted by appellate courts ? Are such orders granted as a matter of course ? What measures would you suggest to prevent such practice and the consequent delays?

(iii) Criminal Courts and Procedure.

34. Are cases and complaints generally registered on the day they are received and action taken on them promptly? If not, what are your suggestions in this connexion ?

35. What reforms, if any, do you suggest in the present method of investigation of cases so as to eliminate delay, harassment and corruption ?

36. Are orders on bail applications generally passed on the same day they are made in your district ? If not, why ? What suggestions do you make in this regard ?

37. There is a suggestion that suretiship bonds, for verification of status of sureties, need not be sent to Tahsildars and that in rural areas the revenue receipts of Bhumidars and Sirdars (supported by an affidavit that the land has not since been transferred and continues to be in the possession and tenancy of the surety) should be accepted as adequate proof of status ; and that likewise in urban areas the house-tax and income-tax receipts should be admitted as proof of status of the sureties.

Do you think this will eliminate corruption and avoid delay in such matters ?

Will it be a sufficient safeguard for proceeding against the surety in case of default? What in your opinion should be the proper course?

38. Is there any delay in identification of property and of accused? Do you think it will help if there is one special Magistrate purely for conducting identification of accused and property ? Is it possible to simplify the procedure in this regard ? Can identification proceedings be eliminated in some cases ? If so, give your suggestions.

39. Are copies of police diaries issued to the accused in time in your district ? If not, will it avoid delay if such copies are filed with the charge-sheet ?

40. How far are the provisions of section 170 (1), Criminal Procedure Code being followed in your district? Do you think that non-compliance with these provisions causes delay and harassment?

41. Do you think that criminal cases are delayed due to late receipt of reports from the Chemical Examiner and other scientific experts? What do you suggest to overcome this difficulty?

42. How far do delays occur in Revenue and Magisterial Courts due to other pre-occupations of the Presiding Officers?

43. Do you think the abolition of the courts of Honorary Magistrates would increase efficiency and eliminate delays in the disposal of those cases which are triable by these courts?

(iv) Panchayat Courts.

44. Do you think the cases in Panchayat Adalats are not expeditiously disposed of? What are their difficulties and what can be done to enable Panchayat Adalats to dispose of cases quickly and efficiently?

PART III—General suggestions and Co-operation

45. What concrete suggestions have you to make in regard to the eradication of corruption? Briefly indicate your reasons for the suggestions.

46. (a) Do you think that concerted effort by the members of the Bar can stop corruption?

(b) Can you suggest means and ways of bringing about this concerted effiort?

(c) Do you think that the appointment of a Vigilance Officer or a small Committee of Vigilance in every district consisting of some members of the bar and some officers can help in stopping corruption?

47. Should propaganda be done in villages to enlighten public opinion against giving of bribes? If so, by what means? How could the agencies of Panchayats and Bar Associations be utilized for this purpose?

APPENDIX B

AMENDMENTS SUGGESTED IN THE CODE OF CIVIL PROCEDURE, 1908

Serial no.	Section/ Rule	Suggested amendments
1.	Section 42.	In section 42 as amended in its application to Uttar Pradesh for the first sentence *substitute* the following : "The court executing a decree sent to it shall have all such powers as it has in executing its own decree and all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, may also be determined by it." After making the proposed amendment, the section will read as below : "The court executing a decree sent to it shall have all such powers as it has in executing its own decree and all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree may also be determined by it. All persons disobeying or obstructing the execution of the decree shall be punishable by such court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself."
2.	Section 80.	2. In section 80— (1) *add* an explanation in the following words : "*Explanation*—Where the court is of opinion that there has been a substantial compliance with the requirements of the section, it shall not dismiss the suit because of any defect in such notice though it may award cost to the defendant," and (2) below the newly added explanation *add* two exceptions in the following words : "*Exception* 1—Nothing in this section shall apply to a suit under any provision of the Zamindari Abolition and Land Reforms Act where the State Government is along with Gaon Samaj or any other such body a party. *Exception* 2—Nothing in this section shall apply to a suit wherein the only relief claimed is an injunc-

Serial no.	Section/ Rule	Suggested amendments

tion of which the object is to be defeated by the giving of the notice or by the postponement of the commencement of the suit."

After making the proposed amendments the section will read as below :

"*Section* 80—*Notice*—No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government ;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of the railway ;

(*c*) in the case of a suit against a State Government, a Secretary to that Government or the Collector of the District ;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.

Explanation—Where the court is of opinion that there has been a substantial compliance with the requirements of the section, it shall not dismiss the suit because of any defect in such notice though it may award cost to the defendant.

Exception 1—Nothing in this section shall apply to a suit under any provision of the Zamindari Abolition and Land Reforms Act where the State Government is along with Gaon Samaj or any other such body a party.

Exception 2—Nothing in this section shall apply to a suit wherein the only relief claimed is an injunction of which the object is to be defeated by the giving of the notice or by the postponement of the commencement of the suit."

In rule 8 for the existing sub-rule (2) *substitute* the following:

3. Order I, rule 8. "The court may on the application of any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1), allow him to be made a party if it is satisfied that his interest is not likely to be protected."

Serial no.	Section/ Rule	Suggested amendments
		After the proposed amendment the rule will read as below : "8. *One person may sue or defend on behalf of all in same interest*—(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct. (2) The court may, on the application of any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1), allow him to be made a party if it is satisfied that his interest is not likely to be protected."
4.	Order V, rules 3, 4 and 4-A.	(1) In rule 3 of Order V *add* the following as sub-rule (3) thereof : "(3) Notwithstanding anything contained in sub-rules (1) and (2) the court may, in its discretion, not order personal appearance of any party, who does not reside within the local limits of its ordinary jurisdiction." (2) Existing rule 4 be deleted. (3) Rule 4-A (added by Allahabad High Court) be renumbered as rule 4. After the proposed amendment rule 3 will read as below : "3. *Court may order defendant or plaintiff to appear in person*—(1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified. (2) Where the court sees reason to require the Personal appearance of the plaintiff on the same day, it shall make an order for such appearance. (3) Notwithstanding anything contained in sub-rules (1) and (2) the court may, in its discretion, not order personal appearance of any party, who does not reside within the local limits of its ordinary jurisdiction."
5.	Order IX, rule 5.	In sub-rule (1) of rule 5 of Order IX *for* the words "three months" *substitute* the words "six weeks". After the proposed amendment sub-rule (1) of rule 5 of Order IX shall read as below : "5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of six weeks from

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the date of the return made to the court by the officer ordinarily certifying to the court returns made by the serving officers, to apply for the issue of a fresh summons the court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the court that—

(a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time in which case the court may extend the time for making such application for such period as it thinks fit."

6. Order X, rule 2. In rule 2 of Order X between the words "may be examined orally by the court" and semi-colon appearing thereafter *add* the following words :

"for the purpose of clarification of pleadings or for the purpose of ascertaining the points in dispute".

After the proposed amendment rule 2 of Order X will read as below :

"At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the court for the purpose of clarification of pleadings or for the purpose of ascertaining the points in dispute ; and the court may, if it thinks fit, put in the course of such examination questions suggested by either party."

6-A. Order XIV-A. After Order XIV insert the following as Order XIV-A—

"ORDER XIV-A

Fixing of dates for final disposal and for parties to take steps for summoning evidence

1. Except in cases to which Order XV applies, the court shall, after framing the issues in a case, fix a date for its final disposal.

2. The court, while fixing a date under rule 1, shall further indicate a date by which the parties, desiring to summon witnesses through court, shall apply to obtain summonses for the attendance of witnesses either to give evidence or to produce documents".

7. Order XVI, rule 1. In rule 1 of Order XVI—

(1) After the word "documents" and before the proviso added by the Allahabad High Court, *add* the following as the first proviso to the said rules :

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"Provided that the court may refuse to issue summons for the attendance of a witness if proper steps for the service on him have not been taken by the party concerned on or before the date fixed for the purpose by the court at the time of fixing a date for recording of evidence" ; and

(2) In the proviso added by the Allahabad High Court *for* the word "provided" *substitute* the words "provided further".

After the suggested amendments the rule will read as follows :

"1. At any time after the suit is instituted, the parties may obtain, on application to the court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents :

Provided that the Court may refuse to issue summons for the attendance of a witness if proper steps for service on him have not been taken by the party concerned on or before the date fixed for the purpose by the court at the time of fixing a date for recording of evidence :

Provided further that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to call any witness not named in a list which must be filed in court before the hearing of evidence on his behalf has commenced, without an order of the Judge made in writing and stating the reasons therefor."

8. Order XVII, rule 1

In rule 1 of Order XVII, *for* the second proviso added by the Allahabad High Court, *substitute* the following:

"Provided further that no such adjournment shall be granted where the party having obtained leave to serve a witness, fails to effect personal service, on such witness, nor shall an adjournment be granted for the purpose of calling a witness not previously summoned ; and no adjournment shall be utilized by any party for producing any witness not previously summoned or named in the list to be submitted under the second proviso to rule 1 of Order XVI, without an order of the Judge made in writing and stating the reasons therefor."

After the proposed amendment the rule will read as below:

"1. *Court may grant time and adjourn hearing*—(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) *Costs of adjournment*—In every such case the court shall fix a day for the further hearing of the suit, and may

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make such order as it thinks fit with respect to the costs occasioned by the adjournment;

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded:

Provided further that no such adjournment shall be granted where the party having obtained leave to serve a witness, fails to effect personal service on such witness, nor shall an adjournment be granted for the purpose of calling a witness not previously summoned; and no adjournment shall be utilized by any party for producing any witness not previously summoned or named in the list to be submitted under the second proviso to rule 1 of Order XVI, without an order of the Judge made in writing and stating the reasons therefor."

9. Order XVIII, rule 2. In rule 2 of Order XVIII—

(1) *Insert* the following as sub-rule (3)—

"The court shall make a brief record of the statement of the case, by either party in his own hand" and

(2) *re-number* the existing sub-rule (3) as sub-rule (4).

After the proposed amendment the rule will read as below:

"2. *Statement and production of evidence*—(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the court generally on the whole case.

(3) The court shall make a brief record of the statement of the case, by either party in his own hand.

(4) The party beginning may then reply generally on the whole case."

10. Order XVIII, rule 5. In rule 5 of Order XVIII *for* the words "by or in the presence and under the personal direction and superintendence of the Judge" *substitute* the following:

"either by the Judge in his own hand or from his dictation in open court or in his presence and under his personal direction and superintendence."

After the suggested amendment the rule will read as follows:

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		"In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing in the language of the court, either by the Judge in his own hand or from his dictation in open court or in his presence and under his personal direction and superintendence, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it."
11.	Order XVIII, rule 8	In rule 8 of Order XVIII-- (1) *for* the existing heading *substitute* the following: "Memorandum when evidence not taken down by Judge or from his dictation" ; and (2) between the words "by the Judge" and the words "he shall be bound" *insert* the words "or from his dictation in open court". After the suggested amendments the rule will read as follows: *"Memorandum when evidence not taken down by Judge or from his dictation*—Where the evidence is not taken down in writing by the Judge or from his dictation in open court, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes and such memorandum shall be written and signed by the Judge, and shall form part of the record."
12.	Order XX, rule 1.	*For* the existing rule 1 of Order XX, *substitute* the following: "The court, after the case has been heard, shall pronounce judgment in open court, either at once or as soon thereafter as may be practicable on some future day; and when the judgment is to be pronounced on some future day, the court shall, the same day, fix a date for the purpose and shall give notice thereof to the parties or their pleaders."
13.	Order XX, rule 7.	*For* the existing rule 7 of Order XX, *substitute* the following: "The date of a decree shall be the date on which the Judge actually signs it."
14.	Order XXI, rule 2.	In sub-rule (1) of rule 2 of Order XXI between the words "otherwise adjusted" and the words "in whole or in part" *insert* the words "in writing". After the proposed amendment sub-rule (1) of the rule will read as below: "Where any money payable under a decree of any kind is paid out of court or the decree is otherwise adjusted in writing, in whole or in part, to the satisfaction of the decree-holder, the decree-holder shall certify such payment

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		or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly."
15.	Order XXI, rule 2-A.	In Order XXI after rule 2 *add* the following as rule 2-A: "2-A. (1) Where parties to a decree enter into a compromise in writing as to the mode of execution of the decree, anyone of them may, within 90 days of the date of such compromise, apply for the recording of compromise to the court having jurisdiction to execute the decree. (2) The court shall thereupon give notice thereof to the other party to show cause on a date to be fixed by it why such compromise should not be recorded. (3) If the court is satisfied that such compromise has taken place and is legally enforceable, it shall record the same and amend the decree accordingly."
16.	Order XXI, rule 17.	In sub-rule (1) of rule 17 of Order XXI *substitute* the following: "On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2) the court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with and if they have not been complied with, the court shall allow the defect to be remedied either then and there or within a time to be fixed by it and in case such defect is not remedied within the time fixed, the court may reject the application."
17.	Order XXI, rule 22.	In sub-rule (1) of rule 22 of Order XXI *for* the words "where an application.....section 44-A" *substitute* the following: "Where an application for execution is made— (a) more than three years after the date of the decree, or (b) against the legal representative of a party to the decree, or (c) in respect of a decree— (i) passed *ex parte*, or (ii) filed under the provisions of section 44-A," After the proposed amendment the main body of the said sub-rule will read as below: "(1) Where an application for execution is made— (a) more than three years after the date of the decree, or (b) against the legal representative of a party to the decree, or

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(c) in respect of a decree—

(i) passed *ex parte*, or

(ii) filed under the provisions of section 44-A,

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him."

18. Order XXI, rule 37. In sub-rule (1) of rule 37—

(1) *for* the word "shall" occurring between the words "court" and "instead" *substitute* the word "may";

(2) *for* the colon after the word "prison" *substitute* a full-stop ; and

(3) *delete* the proviso.

After the proposed amendment the rule will read as follows:

"37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application the court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the court on a date to be specified in the notice and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor".

19. Order XXI, rule 66. *For* sub-rule (2) of rule 66 of Order XXI *substitute* the following:

"(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the date, time and place of sale and specify as fairly and accurately as possible the details of the property to be sold and the amount for the recovery of which the sale is ordered. Where, however, the property ordered to be sold is immovable, the proclamation shall further contain the following :

(a) The revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or any part of an estate paying revenue to the Government ;

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		(b) any encumbrance to which the property is liable ;
		(c) every other thing which the court considers material for a purchaser to know in order to judge the nature and value of the property."
20.	Order XXI, rule 68.	In rule 68 as amended by the Allahabad High Court *for* the words "30 days" *substitute* the words "15 days". After the proposed amendment the rule will read as below: "68. Save in the case of property of the kind described in the proviso to rule 43, no sale here under shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least 15 days in the case of immovable property, and of at least seven days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale."
21.	Order XXII, rule 4.	In sub-rule (1) of rule 4 of Order XXII *for* the full-stop at the end *substitute* a colon and thereafter *add* the following as the provisos thereto: "Provided that the court may call upon any of the surviving defendants or any other person likely to be aware as to who the legal representative of the deceased defendant is to disclose on oath the name and address of such legal representative : Provided further that where such defendant, when called upon, fails to furnish the required information, the court may, irrespective of the result of the suit, direct him to pay the cost of such substitution." After the proposed amendment sub-rule (1) of the rule will read as below: "4. (1) Where one or two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defandant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit : Provided that the court may call upon any of the surviving defendants or any other person likely to be aware as to who the legal representative of the deceased defendant is to disclose on oath the name and address of such legal representative : Provided further that where such defendant, when called upon, fails to furnish the required information, the court may, irrespective of the result of the suit, direct him to pay the cost of such substitution."

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22.	Order XXIII, rule 3.	In rule 3 of Order XXIII— (1) between the words "satisfaction of the court" and the words "that a suit has been adjusted" *add* the words "by a document in writing signed by the parties", and (2) *for* the words "any lawful" *substitute* the words "a legally enforceable". After the proposed amendment the rule will read as below: "Where it is proved to the satisfaction of the court by a document in writing signed by the parties that a suit has been adjusted wholly or in part by a legally enforceable agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit."
23.	Order XXVI, rule 1.	*For* rule 1 of Order XXVI *substitute* the following: "Any court may in any suit, if it is satisfied that the evidence of such person is necessary, issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the court or who is from sickness or infirmity unable to attend it: Provided that the court may refuse to issue such commission where it is satisfied that the application therefor has been so unreasonably delayed as to cause delay in the disposal of the suit."
24.	Order XXVI, rule 9.	In rule 9 of Order XXVI— (1) *Add* the following as the first proviso thereto: "Provided that the court shall not issue another commission for the same purpose unless the former report has been rejected for reasons to be recorded; and" (2) in the existing proviso *for* the word "provided" *substitute* the words "provided further". After the proposed amendment the rule will read as below: "9. In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to

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make such investigation and to report thereon to the court :

Provided that the court shall not issue another commission for the same purpose unless the former report has been rejected for reasons to be recorded :

Provided further that where the State Government has made rules as to the persons to whom such commission shall be issued, the court shall be bound by such rules."

25. Order XXXIX, rules 2 and 2-A.

(1) In rule 2 of Order XXXIX as amended by the Allahabad High Court *add* as sub-rules (3) and (4) the provisions of sub-rules (1) and (2) of rule 2-A added by the said High Court.

After the proposed amendment the rule will read as below:

"2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

(3) In the case of disobedience to an injunction issued under rule 1 or rule 2, sub-rule (2), or of breach of any terms of any such injunction, the court in which the suit is proceeding may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months unless in the meantime the court directs his release.

(4) No attachment under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto."

(2) *For* the existing rule 2-A of Order XXXIX added by the Allahabad High Court, *substitute* the following :

"2-A. Notwithstanding the provisions of rules 1 and 2 no injunction shall be issued against the Government or against any public servant for acts done in his official

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		capacity without giving notice of the application to the Government Pleader and allowing him an opportunity of being heard within such time as the court may, keeping in view the circumstances of the case, fix, unless the court is of the opinion that the object of injunction is likely to be defeated by giving of such notice."
26.	Order XLI, rule 1.	In sub-rule (2) of rule 1 of Order XLI— (1) *delete* the ful-stop at the end, and (2) *add* thereafter the following words: "and shall state separately and distinctly the relief claimed." After the proposed amendment sub-rule (2) of the rule will read as below: "*Contents of memorandum*—(2) The memorandum shall set forth concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively and shall state separately and distinctly the relief claimed."

APPENDIX 'C'

PROPOSED AMENDMENTS IN PROVINCIAL SMALL CAUSE COURTS ACT

THE SECOND SCHEDULE

Serial no.	Section Article	Suggested amendments
1	Article 8 ...	Article 8 be deleted.
2	Article 13 ...	*For* the existing article 13 *substitute* the following: "13. A suit to enforce payment of the allowance or fees respectively called *malkana* and *haq*, or of cesses or other dues, when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution, except in a case where such right is being enforced on the basis of a written agreement or is being enforced on the basis of a decree."
3	Article 38 ...	*For* the existing article 38 *substitute* the following: "All suits relating to maintenance, except where the suit is based on a written agreement or where the right to recover maintenance has been declared by a court of competent jurisdiction."
4	Section 17 ...	*For* the existing proviso to section 17 *substitute* the following: "Provided that an application for an order to set aside a decree passed *ex parte* or for a review of judgment shall not be considered unless the applicant, at the time of making the application or within such time as the court may allow, either deposits in court the amount due under the decree or in pursuance of the judgment, or gives such security for the performance of the decree or compliance with the judgment as the court may direct."

APPENDIX 'D'

AMENDMENTS SUGGESTED IN THE CODE OF CRIMINAL PROCEDURE, 1898

Serial no.	Section	Suggested amendments
13	...	In section 13—

(*a*) *re-number* existing sub-section (3) as sub-section (4), and

(*b*) *insert* a new sub-section (3) in the following words:

"The State Government may appoint Magistrates of the First or Second Class to be additional Sub-Divisional Magistrates and such Additional Sub-Divisional Magistrates shall have, in relation to the sub-division to which they are for the time being attached, all or any of the powers of the Sub-Divisional Magistrate under this Code or under any other law for the time being in force as the State Government may direct."

After the proposed amendment, section 13 will read as below:

"(1) The State Government may place any Magistrate of the First or Second Class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-Divisional Magistrates.

(3) The State Government may appoint Magistrates of the First or Second Class to be Additional Sub-Divisional Magistrates and such Additional Sub-Divisional Magistrates shall have, in relation to the sub-division to which they are for the time being attached, all or any of the powers of the Sub-Divisional Magistrate under

Serial no.	Section	Suggested amendments
		this Code or under any other law for the time being in force as the State Government may direct. (4) The State Government may delegate its powers under this section to the District Magistrate."
2	30 ..	In section 30 *for* the words "in consultation with" *substitute* the words "with the concurrence of". After the proposed amendment, section 30 will read as below: "30. Notwithstanding anything contained in section 28 or section 29, the State Government may, with the concurrence of the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the First Class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years: Provided that no District Magistrate, Presidency Magistrate or Magistrate of the First Class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the First Class."
3	35 ...	In section 35 in between the word "court" and the word "directs" occurring in the last-but-one clause of sub-section (1) *insert* the following words: "for reasons to be recorded." After the proposed amendment, sub-section (1) of section 35 shall read as below: "35. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code, sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to inflict; such punishments, when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court, for reasons to be recorded, directs that such punishments shall run concurrently."

Serial no.	Section		Suggested amendments
4	91	...	In section 91— (*a*) *substitute* the word "that" *for* the word "such" occurring before the word "court" at the end, and (*b*) *add* the words "or in any other court to which the case may, after notice to such person, be transferred for trial" after the word "court" at the end. After the proposed amendment, section 91 will read as below: "91. When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in that court or in any other court to which the case may, after notice to such person, be transferred for trial."
5	103	...	In sub-section (1) of section 103 *for* the words "inhabitants of the locality in which the place to be searched is situate" *substitute* the word "persons". After the proposed amendment, section 103(1) will read as below: "Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable persons to attend and witness the search and may issue an order in writing to them or any of them so to do."
6	106	...	*For* the words "three years" occurring in the last line of sub-section (1) of section 106 *substitute* the words "two years". After the proposed amendment sub-section (1) of section 106 shall read as follows: "106. *Security for keeping the peace on conviction*—(1) Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153-A or section 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court,

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		a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub—Divisional Magistrate or a Magistrate of the First Class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding two years, as it thinks fit to fix."
7	110 ...	In section 110 *for* the words "three years" occurring in the last para thereof *substitute* the words "two years". After the proposed amendment the last para of section 110 will read as below: "such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding two years, as the Magistrate thinks fit to fix."
8	112-A ...	After section 112 *insert* section 112-A in the following words: "112-A. If any person is arrested under section 55 and detained in custody and for any reason, an order under section 112 cannot be made against such person within a period of 24 hours fixed by section 61, the Sub-Divisional Magistrate or any Magistrate of the First Class may, for reasons to be recorded, direct his detention in prison for a period not exceeding fifteen days in the whole."
9	117 (1-A) ...	After sub-section (1) of section 117, *insert* sub-section 117(1-A) in the following words: "If, from the absence of a witness, or any other reasonable cause, it becomes necessary or desirable to postpone the commencement of, or adjourn the enquiry, the Magistrate may, if he thinks fit, by an order in writing, stating the reason therefor, from time to time, postpone or adjourn the same on such terms as he thinks fit, for such time as he considers reasonable and may by a warrant remand the person proceeded against if in custody:

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		Provided that the person proceeded against shall not be remanded under this sub-section for a term exceeding 15 days at a time."
10	123 ...	In section 123— (*a*) *Delete* the words "except in the case next hereinafter mentioned" occurring in sub-section (1), (*b*) *delete* sub-sections (2), (3), (3-A) and (3-B), and (*c*) *re-number* sub-sections (4), (5) and (6) as sub-sections (2), (3) and (4) respectively. After the proposed amendment, section 123 shall read as below: "123. *Imprisonment in default of security*—(1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it. (2) If the security is tendered to the officer-in-charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate. *Kind of imprisonment*—(3) Imprisonment for failure to give security for keeping the peace, shall be simple. (4) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108 be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the court or Magistrate in each case directs."
11	133 ...	In section 133 *for* the words "move to have the order set aside or modified in the manner hereinafter provided" occurring in the last para of its sub-section (1) *substitute* the words "show cause why the said order should not be enforced".

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		After the proposed amendment the last para of sub-section (1) of section 133 shall read as below: "to appear before himself or some other Magistrate of the First or Second Class, at a time and place to be fixed by the order, and show cause why the said order should not be enforced."
12	134 ...	In sub-section (2) of section 134— (*a*) *for* the words "State Government" *substitute* the word "Magistrate", (*b*) *delete* the words "by rule", and (*c*) *for* the words "stuck up at such place or places as may be fittest" *substitute* the following words: "affixed to some conspicuous place at or near the place of nuisance complained of which appears to the Magistrate suitable." After the proposed amendment, sub-section (2) of section 134 shall read as below: "If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Magistrate may direct, and a copy thereof shall be affixed to some conspicuous place at or near the place of nuisance complained of which appears to the Magistrate suitable for conveying the information to such person."
13	135 ...	In section 135— (*a*) *delete* the words "or claim jury" from its heading, (*b*) *delete* the word "either" occurring in its clause (*b*), and (*c*) *delete* the words "or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper" occurring in its clause (*b*). After the proposed amendment, section 135 will read as below: "135. *Person to whom order is addressed to obey or show cause*—The person against whom such order is made shall— (*a*) perform, within the time and in the manner specified in the order, the act directed thereby; or

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		(*b*) appear in accordance with such order and show cause against the same."
14	136	... In section 136 *delete* the words "or apply for the appointment of a jury as required by section 135". After the proposed amendment, section 136 will read as below: "136. *Consequence of his failing to do so*—If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute."
15	136-A	... After section 136 *insert* section 136-A in the following words: "136-A. *Procedure where existence of public right is denied*—(1) While an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel and place, and if he does so, the Magistrate shall, before proceeding under section 137, inquire into the matter. (2) If in such inquiry the Magistrate finds that there is no reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent civil court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137. (3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial."

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16	137-A	...	After section 137 *insert* section 137-A in the following words: "137-A. *Power of Magistrate to direct a local inquiry or to summon and examine an expert*—It shall be competent for the Magistrate for the purposes of investigation in this chapter to direct a local inquiry or to summon and examine an expert. The costs of the local inquiry or the examination of an expert would be borne by the State, if such inquiry or examination was ordered by the Magistrate *suo moto*. The costs of a local inquiry or examination of an expert, when applied for by any party to the dispute, shall be borne by that party either in part or in full as the Magistrate may direct: Provided that where the party is directed to bear the cost only in part, the balance shall be borne by the State."
17	138	...	Section 138 be deleted.
18	139	...	Section 139 be deleted.
19	139-A	...	Section 139-A be deleted.
20	144	...	In sub-section (3) of section 144 *add* the words "or area" at the end. After the proposed amendment, sub-section (3) of section 144 will read as below: "An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place or area."
21	145	...	In the opening sentence of sub-section (1) after the words "Sub-Divisional Magistrate" the words "exercising first class powers" be added and after the words "or a Magistrate of the First Class", the words "specially empowered" be added. Further in the concluding sentence of this sub-section the words "by putting in affidavits" be omitted. After the proposed amendment, sub-section (1) shall read as below: "(1) Whenever a District Magistrate or a Sub-Divisional Magistrate exercising first class powers or any other Magistrate of the

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		First Class specially empowered is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and further requiring them to put in such documents, or to adduce the evidence of such persons as they rely upon in support of such claims." In sub-section (4) the "comma" between the words "statements" and "documents" shall be substituted by the word "and" and the words "and affidavits" between the words "documents" and "if any" shall be omitted and the words "receive such evidence as may be produced by them" preceded by a "comma" shall be inserted between the words "hear the parties" and "and conclude the inquiry". Further the first proviso to sub-section (4) shall be omitted. In the second proviso which shall now be the first proviso, the word "further" shall be omitted and the words "of such order" be deleted and substituted by the words "on which he had originally received information of the dispute". A further proviso to this sub-section shall be added in the following terms: "Provided further that the Magistrate may, if he thinks fit, appoint a Receiver of the attached property, who, subject to the control of the Magistrate, and on his furnishing sufficient security, shall have all the powers of a Receiver appointed under the Code of Civil Procedure." After the proposed amendment, sub-section (4) shall read as below:

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		"*Inquiry as to possession*—The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess to the subject of dispute, peruse the statements and documents, if any, so put in, hear the parties, receive such evidence as may be produced by them and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order beforementioned in such possession of the said subject: Provided that, if it appears to the Magistrate that any party has within two months next before the date on which he had originally received information of the dispute been forcibly and wrongfully dispossessed. he may treat the party so dispossessed as if he had been in possession on such date: Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section: Provided further that the Magistrate may, if he thinks fit, appoint a Receiver of the attached property, who, subject to the control of the Magistrate, and on his furnishing sufficient security, shall have all the powers of a Receiver appointed under the Code of Civil Procedure." In sub-section (5) of section 145— (*a*) *For* the words "all further proceedings thereon shall be stayed" *substitute* the following words: "thereupon all attachments and other proceedings taken shall cease to be effective", and (*b*) *add* a proviso in the following words: "Provided that in the event of such cancellation the Magistrate shall restore possession to the party who may have been dispossessed due to attachment."

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After the proposed amendments, sub-section (5) of section 145 shall read as below:

"(5) Nothing in this section shall preclude any party so required to attend or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and thereupon all attachments and other proceedings taken shall cease to be effective, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final:

Provided that in the event of such cancellation the Magistrate shall restore possession to the party who may have been dispossessed due to attachment."

Add the following sentence in the end of sub-section (6):

"Any party disobeying the order of the Magistrate shall be liable to be punished under section 188 of the Indian Penal Code."

After the proposed amendment, sub-section (6) shall read as below:

"*Party in possession to retain possession until legally evicted*—(6) If the Magistrate decides that one of the parties was or should under the second proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the second proviso to sub-section (4), may restore possession to the party forcibly and wrongfully dispossessed. Any party disobeying the order of the Magistrate shall be liable to be punished under section 188 of the Indian Penal Code."

In section 146—

In sub-section (1) of section 146—

(*a*) *delete* comma, (,) after the words "he may attach it", and

(*b*) *for* the words, "and draw up a satement of facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any and which of the

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		parties was in possession of the subject of dispute at the date of the order as explained in sub-section (4) of section 145; and he shall direct the parties to appear before the Civil Court on a date to be fixed by him" *substitute* the following words: "until a competent court has determined the rights of the parties thereto, or the person entitled to possession thereof." (2) *Delete* sub-sections (1-A), (1-B), (1-C), (1-D) and (1-E). After the proposed amendment, section 146 will read as follows: "146. *Power to attach subject of dispute*—(1) If the Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession of the subject of dispute, he may attach it until a competent court has determined the rights of the parties thereto, or the person entitled to possession thereof: Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time, if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute. (2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no Receiver of the property, the subject of dispute, has been appointed by any Civil Court, appoint a Receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a Receiver appointed under the Code of Civil Procedure (XIV of 1882): Provided that, in the event of a Receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the Receiver appointed by the Magistrate, who shall thereupon be discharged."
23	167 ...	In section 167— (*a*) *For* the words "forward the accused to" in sub-section (1) of section 167, *substitute* the following words: "produce or cause to be produced the accused before", and

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		(*b*) *for* the words "to whom an accused person is forwarded" in sub-section (2) *substitute* the following words: "before whom an accused person is produced." After the suggested amendments, sub-section (1) and sub-section (2) of section 167 shall read as below: "167. *Procedure when investigation cannot be completed in twenty-four hours*—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation if he is not below the rank of Sub-Inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time produce or cause to be produced the accused before such Magistrate. (2) The Magistrate before whom an accused is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorise detention in the custody of the police."
24	207-A ..	In section 207-A— (1) In sub-section (4)— (*a*) *add* the word "all" in between the words "take the evidence of" and the words "such persons", (*b*) *delete* the words "if any" occurring in between the words "such persons" and the words "as may be produced", and

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(*c*) *delete* the word "actual" occurring in between the words "as witnesses to the" and the words "commission of the offence alleged";

(2) after sub-section (5) *insert* sub-section (5-A) in the following words:

"(5-A) The Magistrate may, if necessary, examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and shall thereafter give the accused an opportunity to produce such evidence in his defence as he may choose to produce unless, for reasons to be recorded, he deems it unnecessary to do so"; and

(3) in sub-section (6)—

(*a*) *for* the words "sub-section (4)" *substitute* the words "sub-sections (4) and 5-A",

(*b*) *delete* the words "and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him", and

(*c*) *add* the word "sufficient" in between the words "disclose no" and the words "grounds for committing the accused person for trial".

After the proposed amendments, sub-sections (4), (5), (5-A) and (6) of section 207-A will read as below:

"(4) The Magistrate shall then proceed to take the evidence of all such persons as may be produced by the prosecution as witnesses to the commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.

(5) The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4) and in such case, the prosecutor may re-examine them.

(5-A) The Magistrate may, if necessary, examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and

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		shall, thereafter, give the accused an opportunity to produce such evidence in his defence as he may choose to produce unless, for reasons to be recorded, he deems it unnecessary to do so. (6) When the evidence referred to in sub-sections (4) and (5-A) has been taken and the Magistrate has considered all the documents referred to in section 173 and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly."
25	251-A	... In sub-section (6) of section 251-A— (*a*) *for* the full-stop at the end *substitute* a semi-colon, and (*b*) *add* at the end the following words : "and if at any time before such date the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so." After the proposed amendments, sub-section (6) of section 251-A will read as below: "(6) If the accused refuses to plead, or does not plead or claims to be tried, the magistrate shall fix a date for the examination of witness ; and if at any time before such date the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so."

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26	263 ...	In section 263— (*a*) *for* the existing heading *substitute* the following: "Record in cases tried summarily", (*b*) *for* the words "in cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge" *substitute* the following words: "In every case tried summarily by a Magistrate or Bench, such Magistrate or Bench need not frame a formal charge but shall record a substance of the evidence of witnesses", (*c*) *for* the words "but he or they shall" *substitute* the word "and", and (*d*) *add* the following proviso at the end: "Provided that in the case of an appealable sentence being passed, the Magistrate shall record a judgment." After the proposed amendments, section 263 will read as below: "263. *Record in cases tried summarily*—In every case tried summarily by a Magistrate or Bench, such Magistrate or Bench need not frame a formal charge but shall record a substance of the evidence of witnesses, and enter in such form as the State Government may direct the following particulars: (*a*) the serial number; (*b*) the date of the commission of the offence; (*c*) the date of the report or complaint; (*d*) the name of the complainant (if any); (*e*) the name, parentage and residence of the accused; (*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*), clause (*f*) or clause (*g*) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed; (*g*) the plea of the accused and his examination (if any); (*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

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			(*i*) the sentence or other final order; and (*j*) the date on which the proceedings terminated: Provided that in the case of an appealable sentence being passed, the Magistrate shall record a judgment."
27	264	...	Section 264 be deleted.
28	288	...	*For* the existing provision of section 288 *substitute* the following: "The court may, when it is of opinion that a witness at the trial is materially departing from his evidence duly recorded in the presence of the accused under Chapter XVIII, take on record for all purposes subject to the provisions of the Indian Evidence Act such evidence of the witness." After the proposed amendment, section 288 will read as below: "288. The court may, when it is of opinion that a witness at the trial is materially departing from his evidence duly recorded in the presence of the accused under Chapter XVIII, take on record for all purposes subject to the provisions of the Indian Evidence Act such evidence of the witness."
29	356	...	In section 356— (*a*) *for* the word "from" between the words "his own hand or" and the words "his dictation" in sub-section (1) *substitute* the word "to", and (*b*) *add* in sub-section (3) between the words "shall be written" and the words "and signed" the following words: "with his own hand or to his dictation in open court." After the proposed amendment, sub-sections (1) and (3) of section 356 will read as below: "356. *Record in other cases outside presidency towns*—(1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the court either by the Magistrate or Sessions Judge with his own hand or to his dictation in open court or in his presence and hearing and under his personal direction and superintendence and the evidence

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		so taken down shall be signed by the Magistrate or Sessions Judge and shall form part of the record. *Memorandum when evidence not taken down by the Magistrate or Judge himself*—(3) In cases in which the Magistrate or the Sessions Judge does not either take down the evidence with his own hand or cause it to be taken down in writing from his dictation in open court he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written with his own hand or to his dictation in open court and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record."
30	397	... In section 397 in between the word "court" and the word "directs" in the last but one clause of sub-section (1) *add* the following words: "for reasons to be recorded." After the proposed amendment, sub-section (1) of section 397 will read as below: "397. *Sentence on offender already sentenced for another offence*—(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court, for reasons to be recorded, directs that the subsequent sentence shall run concurrently with such previous sentence: Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such an order, the latter sentence shall commence immediately."
31	435	... In section 435— (*a*) in sub-section (1) *delete* the words "or District Magistrate or any Sub-Divisional Magistrate empowered by the State Government in this behalf", and

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		(*b*) *delete* sub-sections (2) and (4).
		After the proposed amendment, section 435 will read as below:
		"435. *Power to call for records of inferior courts*—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court and may, when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
		Explanation—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437.
		(2) *Deleted.*
		(3) *Deleted.*
		(4) *Deleted.*"
32	436	... *Delete* the words "and the District Magistrate may himself make, or direct any subordinate Magistrate to make," from section 436.
		After the proposed amendment, section 436 shall read as below:
		"436. *Power to order inquiry*—On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any Magistrate subordinate to him to make further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence who has been discharged:
		Provided that no court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

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33	437	In section 437— (*a*) *delete* the words "or District Magistrate" wherever they occur in para 1, and (*b*) *delete* the word "or Magistrate," wherever they occur in clauses (*a*) and (*b*) of the proviso. After the proposed amendment, section 437 shall read as below: "437. *Power to order commitment*— When, on examining the record of any case under section 435 or otherwise the Sessions Judge considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior court, the Sessions Judge may cause him to be arrested and may thereupon, instead of directing a fresh enquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge, improperly discharged: Provided as below: (*a*) that the accused has had an opportunity of showing cause to such Judge why the commitment should not be made; (*b*) that, if such Judge thinks that the evidence shows that some other offence has been committed by the accused, such Judge may direct the inferior court to inquire into such offence."
34	438	... In section 438— (*a*) *for* sub-section (1), *substitute* the following: "The Sessions Judge, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, may exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may also enhance the sentence provided that in a case where the Sessions Judge is of the opinion that the sentence should be enhanced, the Sessions Judge shall report for the orders of the High

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Court the result of such examination and the orders made by the High Court thereon shall be final", and

(*b*) *add* after sub-section (2) the following two provisos:

"Provided that where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of a party competent to file an appeal:

Provided further that no order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by a pleader in his own defence."

After the proposed amendment, section 438 will read as below:

"438. *Report to High Court*—(1) The Sessions Judge, if he thinks fit on examining under section 435 or otherwise the record of any proceeding, may exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a court by section 338, and may also enhance the sentence provided that in a case where the Sessions Judge is of the opinion that the sentence should be enhanced, the Sessions' Judge shall report for the orders of the High Court the result of such examination and the orders made by the High Court thereon shall be final.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge:

Provided that where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of a party competent to file an appeal:

Provided further that no order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personall or by a pleader in his own defence."

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35	479-A ...	In section 479-A— (*a*) *add* a new proviso at the end of sub-section (1) and before the existing proviso in the following words: "Provided that where the Court is a High Court, it may either proceed under this section to make a complaint or may proceed to try the accused itself." In the existing proviso to sub-section (1) which shall now be second proviso, the word "further" shall be inserted between the words "Provided" and "that"; and (*b*) *for* the words "may be taken" occurring in sub-section (6), *substitute* the following words: "have already been taken". After the proposed amendment, section 479-A will read as below: "479-A. *Procedure in certain cases of false evidence*—(1) Notwithstanding anything contained in sections 476 to 479 inclusive, when any Civil, Revenue or Criminal Court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which appears to have been committed by him, the Court shall, at the time of the delivery of judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefor and may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint thereof in writing signed by the presiding officer of the court setting forth the evidence which, in the opinion of the Court, is false or fabricated and forward the same to a Magistrate of the first class having jurisdiction and may, if the accused is present before the Court, take sufficient security for his appearance before such Magistrate and may bind over any person

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		to appear and give evidence before such Magistrate: Provided that where the Court is a High Court, it may either proceed under this section to make a complaint or may proceed to try the accused itself: Provided further that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the court as the court may appoint. *Explanation*—For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the First Class. (2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200. (3) No appeal shall lie from any finding recorded and complaint made under sub-section (1). (4) Where, in any case, a complaint has been made under sub-section (1) and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided; and the appellate court, after giving the person against whom the complaint has been made an opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of the case is pending. (5) In any case, where an appeal has been preferred from any decision of a Civil, Revenue or Criminal Court but no complaint has been made under sub-section (1), the power conferred on such Civil, Revenue or Criminal Court under the said sub-section may be exercised by the Appellate Court; and where the Appellate Court makes such complaint, the provisions of sub-section (1) shall apply accordingly, but no such order shall be made without giving the person affected thereby an opportunity of being heard.

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		(6) No proceedings shall be taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings have already been taken under this section."
36	528	... The existing heading of sub-section (1) of section 528 shall be *deleted* and substituted by the following heading: "*Withdrawal and transfer of cases by Sessions Judge.*" In section 528 *add* after sub-section (1-C) three new sub-sections, namely, sub-sections (1-D), (1-E) and (1-F) in the following words: "(1-D) When an accused person makes an application under sub-section (1-C), the Sessions Judge may direct him to execute a bond with or without sureties, conditioned that he will, if so ordered, pay any amount which the Sessions Judge may, under the said sub-section award by way of compensation to the person opposing the application. (1-E) Every accused person making any such application shall give to the public prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such a notice and the hearing of the application. (1-F) Where any application for the exercise of the power conferred by sub-section (1-C) is dismissed, the Sessions Judge may, if he is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding Rs.250 as he may consider proper in the circumstances of the case." After the proposed amendment, sub-sections (1) to (1-F) shall read as below: "528. *Withdrawal and transfer of cases by Sessions Judge*—(1) Any Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge subordinate to him.

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		(1-A) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, any Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge. (1-B) Where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (1-A), he may either try the case in his own court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another court for trial or hearing, as the case may be. (1-C) Any Sessions Judge, on an application made to him in this behalf, may, if he is of opinion that it is expedient for the ends of justice, order that any particular case be transferred from one Criminal Court to another Criminal Court in the same Sessions Division. (1-D) When an accused person makes an application under sub-section (1-C), the Sessions Judge may direct him to execute a bond with or without sureties, conditioned that he will, if so ordered, pay any amount which the Sessions Judge may, under the said sub-section award by way of compensation to the person opposing the application. (1-E) Every accused person making any such application shall give to the public prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such a notice and the hearing of the application. (1-F) Where any application for the exercise of the power conferred by sub-section (1-C) is dismissed, the Sessions Judge may, if he is of opinion that the application was frivolous or vaxatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding Rs.250 as he may consider proper in the circumstances of the case."

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37	539-AA ...	In sub-section (1) of section 539-AA— (*a*) *delete* the words and figures "under section 510-A or section 539-A", (*b*) *delete* full-stop after the word "Magistrate" at the end, and (*c*) *add* at the end the following words: "or a Commissioner of Oaths appointed for the purpose by the District Judge for that district." After the proposed amendment, sub-section (1) of section 539-AA will read as below: "(1) An affidavit to be used before any court other than a High Court may be sworn or affirmed in the manner prescribed in section 539 or before any Magistrate or a Commissioner of Oaths appointed for the purpose by the District Judge for that district."
38	265-A to 265-E ...	After Chapter XXII, *insert* a new Chapter in the following words: "Chapter XXII-A". "Of trials of Petty Offences".
	265-A ...	*Special procedure for certain specified offences*—Notwithstanding anything contained in this Code, the procedure hereinafter mentioned shall be followed in cases relating to offences specified hereinafter:
	265-B ...	*Summary disposal of petty cases*—(1) A court, other than a court exercising jurisdiction under section 29-B, taking cognizance of an offence punishable only with fine not exceeding Rs.100 shall state upon the summons to be served on the accused person a concise statement of facts relating to the charge and further state that he may by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter and remit to the court such sum not exceeding Rs.50 as the court may specify. (2) Where the accused person pleads guilty and remits the sum specified, no further proceedings in respect of the offence shall be taken against him. (3) Where the accused person does not plead guilty and appears on the date or adjourned date, as the case may be, for the hearing of the

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		charge, the court shall proceed to hear the case in manner provided by this Code.
	265-C ...	Procedure in petty cases other than those covered by the foregoing section:
		(1) In cases relating to—
		(*a*) offences under sections 137, 160, 172 first part, 173 first part, 174 first part, 175 first part, 180, 184, 185, 186, 187 first part, 188 first part, 277, 278, 290, 334, 336, 341, 352, 358, 426, 447 and 491 of the Indian Penal Code;
		(*b*) offences other than offences falling under section 265-B, punishable under any other law with imprisonment for a term not exceeding three months or with fine not exceeding Rs.500 or with both;
		(*c*) abetment of any of the foregoing offences; and
		(*d*) an attempt to commit any of the foregoing offences, when such attempt is an offence,
		the Prosecutor shall, unless the accused is required to appear before a court exercising jurisdiction under section 29-B, have served upon the accused with the summons, a concise statement of such facts relating to the charge as will be placed before the court by or on behalf of the prosecution if the accused pleads guilty without appearing before the court.
		(2) Where the court recives a notification in writing purporting to be given by the accused or by a counsel acting on his behalf that the accused desires to plead guilty without appearing before the court, the court shall inform the prosecutor of the receipt of the notification and if at the time and place appointed for the trial or adjourned trial of the case, the accused does not appear and it is proved to the satisfaction of the court, on oath or by affidavit, that the statement of facts referred to in sub-section (1) has been personally served upon the accused with the summons, then—
		(*a*) the court may proceed to hear and dispose of the case in the absence of the accused, whether or not the pro-

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		secutor is also absent, in like manner, as if both parties had appeared and the accused had pleaded guilty; or (*b*) if the court decides not to proceed as aforesaid, the court shall adjourn or further adjourn the trial for the purpose of dealing with the case as if the notification aforesaid had not been given: Provided that— (i) if at any time before the hearing the court receives a notification in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification aforesaid, the court shall inform the prosecutor thereof and the court shall deal with the case as if this section had not been passed; (ii) before accepting the plea of guilty and convicting the accused in his absence under this section the court shall cause the notification and the statement of facts aforesaid, including any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence, to be read out before the court; (iii) if the court proceeds under this sub-section to hear and dispose of the case in the absence of the accused, the court shall not permit any statement to be made by or on behalf of the prosecutor with respect to any facts relating to the offence charged other than the statements of facts aforesaid.
	265-D ...	*Record in cases dealt with under this Chapter*—In cases dealt with under this Chapter the court shall record the following particulars: (*a*) The serial number, (*b*) the date of the commission of the offence, (*c*) the date of the report or complaint, (*d*) the name of the complainant (if any), (*e*) the name, parentage and residence of the accused,

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			(*f*) the offence complained of,
			(*g*) the plea of the accused in the words of the accused,
			(*h*) the sentence or other final order as the case may be, and
			(*i*) the date on which the proceedings terminated.
	265-E	...	*Language of record*—Records made under section 265-D shall be written by the Presiding Officer either in English or in the language of the court.
39	412-A	...	After section 412 *insert* a new section in the following words:
			"412-A. *No appeal in cases dealt with under Chapter XXII-A.*—Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty in cases dealt with under Chapter XXII-A, there shall be no appeal except as to the extent or legality of the sentence:
			Provided that there shall be no appeal in cases disposed of under section 265-B".

APPENDIX E

U. P. Land Revenue Act, 1901.

U. P. Agricultural Tenants Acquisition of Privileges Act, 1949.

U. P. Zamindari Abolition and Land Reforms Act along with its various amendments.

U. P. Land Tenures (Regulation of Transfers) Act, 1952.

U. P. Land Reforms Supplementary Act, 1952.

U. P. Bhoodan Yag Act, 1952.

U. P. Land Reforms (Evacuee Land) Act, 1957.

Rampur Thekedari and Pattedari Abolition Act.

The U. P. Government Land (Eviction and Rent Recovery) Act, 1953.

The Jaunsar-Bawar Security of Tenure and Land Reforms Act, 1952.

The Jaunsar-Bawar Zamindari Abolition and Land Reforms Act, 1956.

Kumaun Agricultural Land (Miscellaneous Provisions) Act, 1954.

U. P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956.

The U. P. Government Estates Thekadari Abolition Act, 1958.

U. P. Consolidation of Holdings Act.

U. P. Abolition of Zamindari Chaharum Act, 1951.

U. P. Commutation of Rent (Regularisation of Proceedings) Act, 1952.

The Kumaun, Nayabad and Waste Land Act, 1948.

U. P. Rural Development (Requisitioning of Land) Act, 1948.

U. P. Private Forests Act, 1948.

APPENDIX F

STATEMENT SHOWING INSTITUTION OF SESSIONS TRIALS AND CRIMINAL APPEALS AND REVISIONS AND THEIR DISPOSAL BY DISTRICT AND SESSIONS JUDGES AND CIVIL AND SESSIONS JUDGES FROM 1947 TO 1958

Year	Institutions		Disposal	
	Sessions Trials	Criminal appeals and Revisions	Sessions Trials	Ciminal appleals and Revisions
1947 ..	2,519	11,004	2,351	12,419
1950 ..	4,729	19,850	4,445	19,177
1951 ..	4,695	22,865	4,452	21,027
1952 ..	5,013	23,126	4,518	21,360
1953 ..	5,545	25,582	5,525	26,316
1954 ..	6,194	25,891	5,361	24,735
1955 ..	6,089	23,512	5,642	23,379
1956 ..	6,293	23,556	5,635	21,678
1957 ..	5,657	19,389	5,590	21,272
1958 ..	6,584	23,284	6,876	24,26
1959 ..	6,865	22,783	6,914	22,788

NOTE—The above figures were supplied to the Committee through the courtesy of the Registrar, High Court of Judicature, Allahabad, except the figures for the disposals for the year 1947 which were collected from the Wanchoo Committee Report (Judicial Reforms Committee, 1950-51.).

APPENDIX G

EXTRACT FROM THE MONTHLY BULLETIN OF STATISTICS FOR MARCH, 1960, VOLUME XIV OF THE ECONOMICS AND STATISTICS DEPARTMENT, GOVERNMENT OF UTTAR PRADESH

Retail prices of commodities as obtaining in the city of Lucknow

		Sr.	Ch.
Wheat	Seers per rupee ..	2	2
Barley	Ditto ..	3	4
Gram	Ditto ..	3	0
Rice	Ditto ..	2	0
			Rs.
Pulses Arhar	Rupees per seer ..		0·57
Onion dry	Ditto ..		0·37
Potato (Pahari)	Ditto ..		0·25
Tomato	Ditto ..		0·25
Ghee Desi	Ditto ..		5·23
Vegetable Ghee	Ditto ..		2·37
Milk	Ditto ..		0·60
Gur	Ditto ..		0·50
Sugar crystal	Ditto ..		1·12
Salt	Ditto ..		0·09
Chillies	Ditto ..		3·50
Tea	Rupees per 1/8 lb. ..		0·42

APPENDIX G—(*Concld.*)

		Rs.
Dhoties (for males) ..	Rupees per pair ..	9·78
Dhoties (for females) ..	Ditto ..	10·00
Bed-sheets	Ditto ..	7·94
Coating	Rupees per yard ..	1·53
Longcloth	Ditto ..	1·16
Shirting	Ditto ..	1·12
Firewood	Rupees per maund ..	2·00
Kerosene oil	Rupees per bottle of 24 oz.	0·28
Washing soap	Rupees per cake of 4 chhataks.	0·54

APPENDIX H

AVERAGE COST OF LIVING ACCORDING TO CURRENT PRICES, VIDE MONTHLY BULLETIN OF STATISTICS OF THE ECONOMICS AND STATISTICS DEPARTMENT OF U. P. GOVERNMENT FOR MARCH, 1960, VOL. XIV

Main items of requirement	Rate	At the age of 22 years (paid apprentice) Family: Husband 1, Wife 1, Child—3 years 1		At the age of 25 years, while promoted to cadre post: Husband 1, Wife 1, Child—6 yrs 1, Do. 2 ,, 1		At the age of 35 years: Husband 1, Wife 1, Son—16 years 1, Daughter—12 years 1, Son—8 years 1, Daughter—4 years 1		At the age of 45 years: Husband 1, Wife 1, Son—21 years 1, Do. 4 ,, 1, Daughters— 10, 7 and 4 years. 3	
		Requirements	Price	Requirements	Price	Requirements	Price	Requirements	Price
1	2	3	4	5	6	7	8	9	10
	Sr. ch.	Sr.	Rs.		Rs.		Rs.		Rs.
Wheat ..	2 2	15	7·00	20 Sr.	9·50	1 Maund	19·00	1½ Maund	28·50
Barley ..	3 4	5	1·50	6½ Sr.	2·00	10 Sr.	3·08	13 Sr.	4·00
Gram ..	3 0	6	2·00	6 Sr.	2·00	12 Sr.	4·00	15 Sr.	5·00
Rice ..	2 0	8	4·00	10 Sr.	5·00	20 Sr.	10·00	30 Sr.	15·00
Pulses (Arhar, Moong, Urd) ..	1 15	8	4·12	10 Sr.	5·25	20 Sr.	10·50	30 Sr.	15·75

Vegetables ..	0·25 per Sr.	15	3·75	20 Sr.	5·00	1 Md.	10·00	2 Md.	20·00
Ghee Deshi ..	5·00 per Sr.	1½	7·50	2 Sr.	10·00	3 Sr.	15·00	5 Sr.	25·00
Vegetable oil and Mustard oil ..	2·00 per Sr.	1½	3·00	2 Sr.	4·00	4 Sr.	8·00	5 Sr.	10·00
Spices, salt, chillies, etc. ..		Lump sum	2·50	Lump sum	3·00	Lump sum	5·00	Lump sum	8·00
Tea ..	1·50 per lb.	½ lb.	0·75	1 lb.	1·50	1 lb.	1·50	1½ lb.	2·25
Sugar ..	1·02 per Sr.	4 Sr.	4·08	6 Sr.	6·12	10 Sr.	10·20	10 Sr.	0·20
Milk ..	10 annas per Sr.	15 Sr.	9·37	20 Sr.	12·50	30 Sr.	18·75	30 Sr.	18·75
Fuel wood ..	Rs. 2 per maund.	1½ Md.	3·00	2 Md.	4·00	4 Md.	8·00	5 Md.	10·00
House rent ..	Rs. 15 p. m.	Lump sum	15·00	Lump sum	15·00	Lump sum	20·00	Lump sum	30·00
Ceremonies and festivals ..		Ditto	5·00	Ditto	5·00	Ditto	15·00	Ditto	20·00
Household servants—									
Kaharir ..		Ditto	3·00	Ditto	4·00	Ditto	5·00	Ditto	5·00
Sweeper ..		Ditto	0·50	Ditto	0·50	Ditto	0·75	Ditto	1·00
Washerman ..		Ditto	2·50	Ditto	3·00	Ditto	5·00	Ditto	5·00
Male servant ..		Ditto	..	..	..	..	..	..	20·00

Main items of requirement	Rate	At the age of 22 years (paid apprentice) Family: Husband 1, Wife 1, Child—3 years 1		At the age of 25 years, while promoted to cadre post: Husband 1, Wife 1, Child—6 years 1, Do. 2 „ 1		At the age of 35 years: Husband 1, Wife 1, Son—16 years 1, Daughter—12 yrs. 1, Son—8 years 1, Daughter—4 years. 1		At the age of 45 years: Husband 1, Wife 1, Son—21 years 1, Do. 14 „ 1, Daughters—3 10, 7 and 4 years	
		Requirements	Price	Requirements	Price	Requirements	Price	Requirements	Price
1	2	3	4	5	6	7	8	9	10
	Rs.		Rs.		Rs.		Rs.		Rs.
Toilets, hair oil and washing soap, etc. ..	..	Lump sum	1·80	Lump sum	2·25	Lump sum	5·00	Lump sum	5·00
Education ..	..	..	..	Ditto	5·00	Ditto	12·00	Ditto	25·00
Light ..	..	Ditto	3·00	Ditto	3·00	Ditto	4·00	Ditto	6·00
Furniture, utensils and crockery ..	..	Ditto	4·00	Ditto	6·00	Ditto	10·00	Ditto	15·00
Other Miscellaneous postage and conveyance, etc. ..	..	..	4·00	Ditto	5·00	Ditto	10·00	Ditto	15·00

Cloth and footwears:									
Sari per pair ..	10·00								
Blouse per pair	8·00								
Suit for child	5·00								
Pant for child	8·00								
Shirts for child	8·00								
Bedding lump sum.	12·00	Ditto	7·50	Ditto	9·00	Ditto	15·00	Ditto	40·00
Sheos per pair	16·00								
Chappal per pair.	8·00								
Baby shoe per pair.	4·00								
Medical ..	..	Ditto	2·00	Ditto	4·00	Ditto	6·00	Ditto	6·00
Total	..		100·00		131.00		230.00		365.00